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PREPARATORY COMMITTEE ON THE ESTABLISHMENT
OF AN INTERNATIONAL CRIMINAL COURT
12-30 August 1996

DRAFT STATUTE OF THE INTERNATIONAL CRIMINAL COURT

Working paper submitted by France

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I. TABLE OF CONCORDANCE BETWEEN THE DRAFT BY THE INTERNATIONAL LAW COMMISSION AND THE PROPOSALS BY FRANCE

ILC draft	Proposals by France	Comments
PREAMBLE	PREAMBLE	No difference
Art. 1 The Court	Art. 1 The Court	France suggests stipulating that the International Criminal Court should be permanent
No equivalent	Art. 2 General Assembly of the States parties	New text proposed by France
Art. 2 Relationship of the Court to the United Nations	Art. 3 Relationship of the Court to the United Nations	The French proposal draws on the statute of the United Nations specialized agencies
Art. 3 Seat of the Court	Art. 4 Seat of the Court	The French proposals are more detailed and also relate to art. 32 of the ILC draft
Art. 4 Status and legal capacity	Art. 5 Permanence of the Court	France proposes specifying the functions for which a permanent presence of the Court is required
Art. 5 Organs of the Court	Art. 6 Organs of the Court	France proposes three additional organs: the Preliminary Investigations Chambers, the Remand Chamber and the General Assembly of Judges of the Court
Art. 6 Qualification and election of the judges Art. 7 Judicial vacancies	Art. 7 Qualification and election of judges Art. 8 Internal organization Art. 12 Alternate judge counsellors	Some differences in the proposals by France, more particularly the number of judges, the number of candidates nominated by each State party and the age limit. The "alternate judge counsellors" in the French draft (art. 12) are provided for in art. 9 (6) of the ILC draft

ILC draft	Proposals by France	Comments
Art. 8 The Presidency	Art. 9 Presidency of the Court	Few differences. Art. 9 proposed by France must be read in conjunction with art. 10.
No equivalent	Art. 10 Preliminary Investigations Chambers	New text proposed by France: creation of Preliminary Investigations Chambers, which overall play the role of the Presidency in the ILC draft.
Art. 9 Chambers	Art. 11 Chambers of the Court Art. 13 Plurality of offices and incompatibilities	Many differences between the two drafts. Drawing the judges by lot plays a large role in the French draft; the incompatibilities are also stricter
Art. 10 Independence of judges	Art. 15 Independence of judges	Few differences
Art. 11 Excusing and disqualification of judges	Art. 14 Excusing and disqualification of judges	Few differences
Art. 12 The Procuracy	Art. 16 The Procuracy of the Court Art. 17 Investigators	Some differences: the French draft stipulates more particularly a term of office of nine years for judges, and the Prosecutor and Deputy Prosecutors are not eligible for re-election. An age limit is fixed.
Art. 13 The Registry	Art. 19 Registry of the Court	Few differences. The French draft fixes an age limit.
Art. 14 Solemn undertaking	Art. 20 Solemn undertaking Art. 21 Independence of the staff of the Court	The French proposals are more detailed

ILC draft	Proposals by France	Comments
Art. 15 Loss of office	Art. 22 Loss of office	France suggests that the power to dismiss an officer of the Court should lie with the General Assembly of the States parties
Art. 16 Privileges and immunities	Art. 23 Privileges and immunities	Few differences
Art. 17 Allowances and expenses	Art. 24 Remuneration	Few differences
Art. 18 Working languages	Art. 25 Working languages	Few differences.
Art. 19 Rules of the Court	Art. 26 Rules of the Court	Few differences.
Art. 20 Crimes within the jurisdiction of the Court	Art. 27 Jurisdiction ratione materiae Art. 28 Genocide Art. 29 Crimes against humanity Art. 30 Crime of aggression Art. 31 Serious violations of the laws and customs of war Art. 32 Grave breaches of the Geneva Conventions	Many differences. France proposes an <u>exhaustive list of crimes</u> within the jurisdiction of the Court (unlike art. 20 (e) of the ILC draft). Each of the crimes is then precisely defined.

ILC draft	Proposals by France	Comments
Art. 21 Preconditions to the exercise of jurisdiction Art. 22 Acceptance of the jurisdiction of the Court for the purposes of art. 21	Art. 34 Consent of States	Major differences. France proposes jurisdiction <u>by consent, case by case, for all crimes</u> within the jurisdiction of Courts. The consent mechanism, which is different from that in the ILC draft, is a result of the combined provision of arts. 35, 36 and 39.
No equivalent	Art. 33 Jurisdiction ratione temporis	New text proposed by France
Art. 23 Action by the Security Council	Art. 38 Role of the Security Council	Few differences
Art. 24 Duty of the Court as to jurisdiction	Art. 35 Concurrent jurisdiction Art. 36 Verification of jurisdiction	The French proposals are different and more detailed; they also relate to the consent mechanism (cf. arts. 34, 36 and 39).
No equivalent	Art. 39 Challenge of a submission to the Court	Very important new text proposed by France: Art. 39 introduces, once the case is brought before the Court, a mechanism to implement the principle of complementarity.
Art. 25 Complaint	Art. 37 Submission by a State	The difference between the two drafts lies more particularly in the fact that, in the French draft, submission to the Court is not confined to States parties that have consented to the jurisdiction of the Court.

ILC draft	Proposals by France	Comments
Art. 26 Investigation of alleged crimes	Art. 40 Initiation of the investigation Art. 42 Closing of the case Art. 43 Reply to the closing of the case Art. 51 Rights of suspects	The proposals of France are both different from and more detailed than the ones in the ILC draft.
No equivalent	Art. 41 Provisional measures	New text proposed by France owing to the inclusion in the draft of a procedure for submission to the Court, which delays initiation of the investigation but during which provisional measures can be taken.
Art. 27 Commencement of prosecution	Art. 44 Indictment Art. 45 Consideration of indictment by the Preliminary Investigations Chamber Art. 47 Non-confirmation Art. 48 Confirmation hearing	The proposals of France are very different from the ILC draft, in particular because they provide for a hearing by the Preliminary Investigations Chamber during which the charges may be contested.
No equivalent	Art. 46 Further investigation Art. 49 Persons who have fled or cannot be found Art. 50 Rights of victims	Several important new proposals by France which provide the possibility of prosecuting persons who have taken flight or cannot be found and accords victims a number of rights.

ILC draft	Proposals by France	Comments
Art. 28 Arrest Art. 29 Pre-trial detention or release	Art. 52 General principle Art. 54 Pre-trial detention Art. 55 Formal requirements Art. 56 Appeal Art. 57 General principles Art. 59 Warrant of arrest and transfer	The French proposals are more detailed than the ones in the ILC draft. The forms and periods of pre-trial detention are different. France's Remand Chamber enters the draft at this stage.
No equivalent	Art. 53 Judicial supervision	New text proposed by France.
Art. 30 Notification of indictment	Art. 48 Confirmation hearing Art. 51 Rights of suspects	In the French draft several articles provide for the notification of rights, decisions and documents.
Art. 31 Persons made available to the Procurator	Art. 18 Persons made available to the Procuracy	Few differences.
Art. 32 Place of trial	Art. 103 Place of trial	The French proposals appear mainly in art. 4 of the draft.
Art. 33 Applicable law	Art. 77 Applicable law	The texts are not very different from each other but the French draft sets an order of priority and specifies the legal systems to which the Court may refer.

ILC draft	Proposals by France	Comments
No equivalent	Art. 78 Persons liable to punishment Art. 79 Official capacity of accused Art. 80 Age of persons liable to punishment Art. 81 Commission and attempted commission Art. 82 Omission Art. 83 Moral element Art. 84 Perpetrator and accomplice Art. 85 Prescription by law, and orders of the legitimate authority Art. 86 Legitimate defence Art. 87 Necessity Art. 88 Mental disorders Art. 89 Drunkenness or narcotic intoxication Art. 90 Constraint Art. 91 Misinterpretation of the law	At this stage France proposes a whole section on criminal law and criminal responsibility which therefore contains very many new texts.

ILC draft	Proposals by France	Comments
Art. 34 Challenges to jurisdiction Art. 35 Issues of admissibility Art. 36 Procedure under articles 34 and 35	Art. 107 Notification of the indictment to the State parties for the purpose of challenging the submission of the case to the Court Art. 115 and 116 Challenging of submission of the case to the Trial Chamber	The procedures of challenging submission to the Trial Chamber are different in the two texts, in regard to both form and substance.
No equivalent	Art. 98 Submission to the Trial Chamber Art. 99 Provisional detention and judicial supervision Art. 100 Warrants issued by the Trial Chamber Art. 105 Determination of proof Art. 106 Summons for the accused to appear Art. 108 Summoning of witnesses and experts Art. 109 Assistance by a registrar Art. 110 Means of constraint	The French draft gives a number of details concerning the conduct of the trial.
Art. 37 Presence of the accused at the trial	Art. 111 Presence of the accused at the trial	Some differences between the two texts, essentially of a technical nature.
No equivalent	Art. 112 Trial of accused who is evading justice	Important new text proposed by France.

ILC draft	Proposals by France	Comments
Art. 38 Functions and powers of the Trial Chamber	Art. 104 Public nature of trial Art. 113 Opening of trial Art. 114 Defence of nullity and inadmissibility of evidence Art. 121 Powers of the Chamber	The French draft has a different presentation. It contains technical details and there are several important difference. For example, it does not provide for the accused to be allowed to enter a plea of guilty or not guilty, as in article 38, paragraph 1 (d), of the ILC draft.
No equivalent	Art. 120 Powers of the President	Important new text proposed by France, giving the President of the Trial Chamber important powers.
Art. 39 Principle of legality Art. 40 Presumption of innocence Art. 41 Rights of the accused	Art. 101 Rights of the accused	The two texts are not fundamentally different. The provisions of article 101 of the French draft supplement article 51 concerning the rights of the suspect.
No equivalent	Art. 125 Confidentiality of communications between the accused and his defence counsel	The French draft contains important details.
Art. 42 Non bis in idem	Art. 131 Non bis in idem	The two texts are very dissimilar, particularly in that they do not apply to the same cases. The cases dealt with in article 42 of the ILC draft are to be found in articles 115 and 116 of the French draft.
Art. 43 Protection of the accused, victims and witnesses	Art. 102 Measures for the protection of victims and witnesses Art. 104 Public nature of trial	The French draft contains more detailed provisions.

ILC draft	Proposals by France	Comments
No equivalent	Art. 117 Decision to postpone Art. 118 Request for legal cooperation Art. 119 Recording of deliberations and preservation of evidence	The French proposals explain certain points and contain new wording concerning sound and audiovisual recording of deliberations.
Art. 44 Evidence	Art. 122 Testimony Art. 124 Purgery	Some differences of a mainly technical nature.
No equivalent	Art. 123 Secrecy on defence grounds	New text proposed by France.
No equivalent	Art. 126 Arguments and pleadings	New text proposed by France dealing with the right of representatives of the victims to request the Trial Chamber to establish principles relating to civil compensation for damage suffered.
Art. 45 Quorum and judgement	Art. 127 Consideration of decisions Art. 129 Judgement	Some differences between the two texts, mainly regarding the quorum rules.
No equivalent	Art. 128 Fate of the person tried Art. 130 Compensation of victims	New text proposed by France.
Art. 46 Sentencing	No equivalent	The French proposals do not provide for any separation of the decision as to guilt from the sentencing.

ILC draft	Proposals by France	Comments
Art. 47 Applicable penalties	Art. 92 Penalties applicable to physical persons	Major differences between the two texts. The French draft does not provide for reference on this point to the legal systems of the States parties.
No equivalent	Art. 93 Penalties applicable in the event of concurrence of offences Art. 94 Minimum periods Art. 95 Penalties applicable to juridical persons	Some important clarifications and new provisions in the French draft (including penalties for juridical persons).
No equivalent	Art. 96 Crimes not subject to limitation Art. 97 Limitation	Here there is a basic departure from the ILO draft, which does not provide for prescription of crimes in respect of which the Court has competence.
Art. 48 Appeal against verdict or sentence Art. 49 Appeal procedure	Art. 132 Appeal against judgement on the merits Art. 133 Effect of appeal Art. 135 Persons entitled to lodge appeals Art. 138 Proceedings before the Appeals Chamber	Several differences.

ILC draft	Proposals by France	Comments
No equivalent	Art. 134 Appeal against judgements other than those given on the merits Art. 136 Time-limit for appeals Art. 137 Form of appeal Art. 139 Copies of evidence Art. 140 Submission to the Appeals Chamber Art. 141 Plea of nullity Art. 142 Status of the accused following decision on appeal Art. 143 Compensation in the case of acquittal	The French proposals add numerous procedural details concerning these questions and there is some new material, particularly concerning compensation in the case of acquittal.
Art. 50 Revision	Art. 144 The case of revision Art. 145 Persons entitled to apply for revision Art. 146 Revision procedure	The French draft contains several differences and is more detailed than the ILC draft.
No equivalent	Art. 147 Award of compensation to persons found innocent	New text proposed by France.

ILC draft	Proposals by France	Comments
Art. 51 Cooperation and judicial assistance	Art. 60 Obligation to cooperate Art. 72 Basic conditions of judicial assistance Art. 73 Formalities of judicial assistance Art. 75 Costs of requests for judicial assistance	Both texts establish an obligation of cooperation. The French proposals deal in more detail with the operation of judicial assistance.
No equivalent	Art. 74 Witnesses and experts	New text proposed by France.
No equivalent	Art. 76 Reciprocal assistance	New text proposed by France.
Art. 52 Provisional measures	No equivalent	In the case of the French proposals, the cases referred to in article 52 of the ILC draft are mentioned elsewhere, in article 41.
Art. 53 Transfer of an accused to the Court	Art. 65 Basic conditions of transfer Art. 66 Transfer formalities Art. 67 Execution of transfer Art. 68 Transit Art. 71 Costs of transfer	Many differences between the ILC draft and the French draft.

ILC draft	Proposals by France	Comments
No equivalent	Art. 69 Concurrent requests for transfer or extradition Art. 70 Request for transfer addressed to a State which invokes the principle of complementarity	Important new text in the French draft which would allow a State to challenge a request of the Court for transfer, in the light of the principle of complementarity.
Art. 54 Obligation to extradite or prosecute	Art. 65 Basic conditions of transfer	The two texts cannot readily be compared, for the ILC draft (art. 20 (e)) extends the competence of the Court to crimes that are not referred to in the French proposals. The second paragraph of the article 65 proposed by France is nevertheless drafted in the same spirit.
Art. 55 Rules of speciality	No equivalent	The French proposals in article 65, paragraph 1, would, in the case of a request for transfer, allow a State to deny the Court's request in the light of its own extradition law, which may guarantee observance of the rule of speciality.
Art. 56 Cooperation with non-party States	Art. 64 Cooperation with States non-parties	Few differences.
Art. 57 Communications and documentation	Art. 61 Working languages Art. 62 Competent national authority Art. 63 Transmission of requests	Several differences. The French draft does not expressly provide for communications through INTERPOL. The French proposals are more detailed.

ILC draft	Proposals by France	Comments
Art. 58 Recognition of judgements	Art. 148 Binding force of decisions of the court	The French draft applies the principle of continuation of the sentence.
Art. 59 Enforcement of sentences	Art. 149 Place of execution of the sentence Art. 150 Supervision of execution of the sentence	Several differences, particularly in article 149, paragraph 2, of the French text. Article 150 has no equivalent in the ILC draft.
No equivalent	Art. 151 Observance of the rule of speciality	New text proposed by France.
Art. 60 Pardon, parole and commutation of sentences	Art. 152 Pardon, parole and commutation of sentences	Several differences, for which the explanation is to be found in article 148 and article 149, paragraph 2, of the French draft.
No equivalent	Art. 153 Enforcement of fines Art. 154 Escape	New texts proposed by France.

II. DRAFT STATUTE

PREAMBLE

The States parties,

Desiring to further international cooperation to enhance the effective suppression and prosecution of crimes of international concern and, for that purpose, to establish an international criminal court;

Emphasizing that such a court is intended to exercise jurisdiction only over the most serious crimes that concern the international community as a whole;

Emphasizing further that such a court is intended to be complementary to national criminal justice systems in cases where such trial procedures may not be available or may be ineffective;

Have agreed as follows:

PART 1. ESTABLISHMENT OF THE COURT

Article 1

The Court

A Permanent International Criminal Court ("the Court"), whose jurisdiction and functioning shall be governed by the provisions of this Statute, is hereby established.

Article 2

General Assembly of the States parties

1. A General Assembly of the States parties to this Statute ("the States parties") is hereby established.

Each State party shall have a representative on the General Assembly.

2. The General Assembly of the States parties shall elect a President and a Vice-President, for one year, as well as any other official it deems necessary.

3. The General Assembly of the States parties shall hold annual sessions and, when circumstances so require, special sessions. The latter shall be convened by the President on his motion or at the request of a majority of the members.

4. The General Assembly of the States parties shall be competent:

(a) To perform the functions assigned to it under this Statute;

(b) To rule on any budget questions;

(c) To increase, if necessary, the number of judges or members of the Procuracy or the Registry, for the period that it shall determine.

5. The General Assembly of the States parties may prevent the representative of a State party from participating in its deliberations when the State party:

(a) Is in arrears in the payment of its contribution to the costs of the Court and the amount of its arrears is the same as or more than the contribution payable for the past two years; however, the General Assembly of the States parties may in that event, authorize participation in its deliberations if it finds that such default is due to circumstances beyond the State party's control;

(b) Persistently violates the principles set forth in this Statute.

6. The decisions of the General Assembly of the States parties shall be taken by secret ballot, by an absolute majority of the States parties.

However, decisions taken under paragraph 4 (c) and paragraph 5 (a) and (b) of this article shall be taken by a two-thirds majority of the States parties.

Article 3

Relationship of the Court to the United Nations

The Court shall, as soon as possible, be brought into relationship with the United Nations. It shall constitute one of the specialized agencies provided for in Article 57 of the Charter of the United Nations. The relationship shall form the subject of an agreement with the United Nations pursuant to Article 63 of the Charter.

The agreement, proposed by the Presidency of the Court, shall be submitted to the General Assembly of the States parties for approval. It shall provide the means for establishing effective cooperation between the Court and the United Nations in the pursuit of their common aims. It shall, at the same time, set forth the autonomy of the Court in its particular field of competence, as defined in this Statute.

Article 4

Seat of the Court

1. The seat of the Court shall be established at ... in ... ("the host State").

The Presidency of the Court shall submit for the approval of the General Assembly of the States parties an agreement establishing relations between the host State and the Court.

2. The Court may also, for a particular case and when travel by the members of the Court is likely to make the proceedings simpler and less costly, sit in a State party other than the host State.

The Presidency of the Court shall make inquiries with the State party that appears likely to receive the Court.

After the State party likely to receive the Court has agreed, the decision under the preceding paragraph to hold a session away from the Court's seat shall be

taken by the General Assembly of the States parties, which shall be informed either by one of its members, the Presidency, the Prosecutor or the General Assembly of Judges of the Court.

With the express agreement of the State party receiving the Court, the privileges, immunities and facilities provided for in article 23 shall continue to be effective when the Court holds a session pursuant to the three preceding subparagraphs.

3. The provisions of paragraph 2 of this article shall also apply to non-party States which, after inquiries by the Presidency, state that they agree to receive the Court and to grant the privileges, immunities and facilities provided for in article 23.

Article 5

Permanence of the Court

1. The Court is a permanent institution open to States parties under the conditions set out in this Statute. It shall act when required to consider a case submitted to it.

2. Without prejudice to the provisions of paragraph 1 of this article, the Presidency, the Preliminary Investigations Chambers, the Procuracy and the Registry shall perform their functions at the Court on a permanent basis.

3. When the Presidency considers that the Court's case-load requires the permanent presence of all the judges of the Court, it shall so inform the General Assembly of the States parties, which may decide that all judges shall perform their duties full-time, for a period determined by the General Assembly or until further notice.

PART 2. ORGANIZATION OF THE COURT

Article 6

Organs of the Court

The Court shall consist of the following organs:

(a) A Presidency, as provided for in article 9;

(b) Preliminary Investigations Chambers, as provided for in article 10;

(c) Trial Chambers, an Appeals Chamber and a Remand Chamber, as provided for in article 11;

(d) A Procuracy, as provided for in article 16;

(e) A Registry, as provided for in article 19;

(f) A General Assembly of Judges, consisting of all the judges of the Court.

Article 7

Qualification and election of judges

1. The judges of the Court shall be persons of high moral character and possess all the qualifications required for appointment to the highest judicial offices. They shall, in addition, have great practical criminal trial experience or recognized competence in international criminal law.

They shall also possess an excellent knowledge of and be fluent in at least one of the working languages referred to in article 25.

2. Each State party may nominate for election not more than three persons who are willing to serve as may be required on the Court.

3. The judges shall be 24 in number. They shall be elected by the General Assembly of the States parties.

No two judges may be of the same nationality. States parties shall endeavour in the election of the judges to ensure that the principal legal systems of the world are represented.

4. A judge's term of office shall be nine years. It shall end in all cases when the judge reaches 75 years of age. Judges shall not be eligible for re-election, subject to the provisions of paragraphs 5 and 6 of this article. In addition, a judge who has started to hear a case shall continue to deal with it, even beyond the limit fixed by this article.

5. Following the first election of the judges, eight judges chosen by lot shall serve for a term of three years, eight more for a term of six years, and the remaining eight for a term of nine years. The judges chosen for a term of three years shall be eligible for re-election.

6. In the event of a vacancy, a new election shall be held in accordance with this article. A judge elected to fill a vacancy shall serve for the remainder of the predecessor's term. If the remainder of the term is less than three years, he shall be eligible for re-election for a further term.

Article 8

Internal organization

1. The college of judges of the Court shall consist of:

(a) A President;

(b) Six Vice-Presidents, including a First Vice-President and a Second Vice-President;

(c) Seventeen judge counsellors.

2. The President, First Vice-President, Second Vice-President and four other Vice-Presidents shall be elected by an absolute majority at a General Assembly of Judges following their first election.

They shall be elected for three years or until expiry of their term as a judge if the term ends before expiry of those three years. They shall be eligible for re-election once.

The General Assembly of Judges of the Court shall be convened when one of the posts referred to in paragraph 1 (a) and (b) of this article falls vacant.

Article 9

Presidency of the Court

The Presidency of the Court shall be responsible for due administration of the Court. It shall consist of the President, the First Vice-President and the Second Vice-President.

Article 10

Preliminary Investigations Chambers

1. The Preliminary Investigations Chambers perform pre-trial functions, in accordance with Part 4 of this Statute.

2. A Preliminary Investigations Chamber shall be established for each case by the President of the Court. It shall consist of two Vice-Presidents and either the First Vice-President or Second Vice-President, who shall preside over it.

Article 11

Chambers of the Court

1. The Trial Chamber shall consist of four judge counsellors and a Vice-President, who shall preside over it.

The Appeals Chamber shall consist of six judge counsellors and either the First Vice-President or Second Vice-President, who shall preside over it.

The Remand Chamber shall consist of four judge counsellors and either the First Vice-President or Second Vice-President, who shall preside over it.

2. All members of the chambers referred to in paragraph 1 of this article shall be chosen by lot. Judges drawn by lot may be excluded as a result of incompatibilities under article 13.

When the membership of a chamber drawn by lot encounters difficulties owing to incompatibilities under article 13, the First and the Second Vice-President may be replaced by a Vice-President, and a Vice-President by the most senior judge counsellor in the Court or, failing such a judge, the oldest.

3. The President of the Court may, if he so wishes, preside over one of the chambers referred to in paragraph 1 of this article, subject to the provisions of article 13.

Article 12

Alternate judge counsellors

1. For the membership of each of the chambers referred to in article 11, the President of the Court may arrange for as many alternate judge counsellors as he deems necessary to be chosen by lot.

They attend hearings of the chamber for which they have been designated, but do not participate in the deliberations. They are not, in that event, subject to the incompatibilities referred to in article 13.

2. In the course of a hearing, an alternate judge counsellor may be required to replace a member of the chamber to which he has been designated, when that member is temporarily unable to perform his duties, either for medical reasons or for one of the reasons set out in articles 13 and 14. The judge shall be chosen by lot from among the alternate judge counsellors designated for that chamber.

Incompatibilities under article 13 shall apply to alternate judge counsellors required to sit under the conditions referred to in the preceding paragraph.

Article 13

Plurality of offices and incompatibilities

For the purposes of ruling on a case, the following functions may not be combined:

(a) Serving as a member of the Preliminary Investigations Chamber appointed for a case under article 10 and as a member of one of the chambers hearing the same case;

(b) Serving as a member of the Trial Chamber and as a member of the Appeals Chamber.

Article 14

Excusing and disqualification of judges

1. A judge of the Court shall not participate in a case:

(a) In the event of one of the incompatibilities under article 13;

(b) When his impartiality may be doubted on any ground, including an actual, apparent or potential conflict of interest.

2. In situations provided for in paragraph 1 of this article, a judge may:

(a) Be excused from a case by the Presidency, with his agreement;

(b) Be disqualified, at the request of the Presidency, the Prosecutor or the accused, in which case the decision shall be taken by the Appeals Chamber, and the judge concerned shall not be present if he forms part of that Chamber; he shall then be replaced by another judge chosen by lot.

Article 15

Independence of judges

1. The judges of the Court shall be independent.

They may not engage in any activity which is likely to be incompatible with their judicial functions or to affect confidence in their independence. They may not, moreover, be a member of the legislative or executive branches of the Government of a State or of a body responsible for the investigation or prosecution of crimes.

2. Judges who are required to serve permanently on the Court, pursuant to article 5 (2) or (3), may not engage in any other employment or hold any other office.

Article 16

Procuracy of the Court

1. The Procuracy shall be an independent organ of the Court responsible under this Statute for receiving complaints addressed to the Court, for examining them and for conducting investigations and prosecutions before the Court.

2. The Procuracy shall be headed by the Prosecutor, assisted by two Deputy Prosecutors. The Procuracy is an indivisible body; the Deputy Prosecutors are entitled to carry out any of the acts required of the Prosecutor under this Statute.

3. The Prosecutor and the Deputy Prosecutors shall be persons of high moral character, possess great competence and have practical experience in the prosecution of criminal cases.

They shall, furthermore, have an excellent knowledge of and be fluent in at least one of the working languages referred to in article 25.

4. Each State party may nominate two persons who are willing to serve as may be required in the Procuracy of the Court.

5. The Prosecutor and Deputy Prosecutors shall be elected by the General Assembly of the States parties. The election of the Prosecutor shall be held first, followed by that of the two Deputy Prosecutors.

No two members of the Procuracy of the Court may be of the same nationality.

6. The Prosecutor and the Deputy Prosecutors shall hold office for nine years. The term shall end in all cases when the person reaches 70 years of age. They shall not be eligible for re-election.

7. The Prosecutor or a Deputy Prosecutor may not participate in a case in which his impartiality might be doubted on any ground, including an actual, apparent or potential conflict of interest.

The Presidency of the Court may on its own motion or at the request of the Prosecutor or of a suspect or accused person, excuse a member of the Procuracy from following a case for one of the reasons set out in the preceding paragraph.

Article 17

Investigators

The Prosecutor may choose investigators who shall assist him in his duties and shall be placed under his sole authority.

They may carry out any acts for which they have been delegated by the Prosecutor or a Deputy Prosecutor, with the exception of requests for cooperation referred to in Part 4 of this Statute.

They shall be staff members of the Court within the meaning of this Statute.

Article 18

Persons made available to the Procuracy

1. The Prosecutor may request a State party to make persons available to him to assist him in a particular case.

2. Such persons shall be under the authority of the Prosecutor for the duration of the case for which they have been made available. They may carry out acts under the conditions established for investigators in article 17.

Article 19

Registry of the Court

1. The General Assembly of Judges shall elect the Registrar and the Deputy Registrar of the Court by an absolute majority by secret ballot.

The Registrar and the Deputy Registrar shall hold office for five years. Their term shall end in all cases when they reach 65 years of age. They shall be eligible for re-election once.

2. The Registrar shall be the principal administrative officer of the Court. He shall be under the authority of the President of the Court.

Article 20

Solemn undertaking

Before taking office pursuant to this Statute, all officers of the Court shall make a public and solemn undertaking to perform their duties impartially and conscientiously.

Article 21

Independence of the staff of the Court

In performing their duties, the officers of the Court and the staff of the Court shall not seek or accept instructions from any Government or any authority outside the Court. They shall refrain from any act incompatible with their status and shall be accountable only to the Court.

The States parties undertake to respect the exclusively international character of the duties of the officers of the Court and the staff of the Court and not to seek to influence them in the performance of their duties.

Article 22

Loss of office

1. An officer of the Court who has seriously breached the rules laid down in this Statute or has committed misconduct such as to jeopardize his independence or his impartiality, or is unable to continue to perform his duties for medical reasons duly established by at least two experts, shall be dismissed under the conditions laid down in paragraph 2 of this article.

2. The decision to dismiss an officer of the Court under the preceding paragraph shall be taken, further to an assenting opinion of the General Assembly of Judges of the Court, by the General Assembly of States parties.

3. An officer of the Court whose activity is challenged under this article may in defence produce any arguments and evidence that he deems necessary. All evidence against him shall be communicated to him.

Article 23

Privileges and immunities

1. The judges, the Prosecutor, the Deputy Prosecutors, the Registrar and the Deputy Registrar shall enjoy the privileges, immunities and facilities of a diplomatic agent within the meaning of the Vienna Convention on Diplomatic Relations of 16 April 1961.

2. The staff of the Registry and other staff members of the Court shall enjoy the privileges, immunities and facilities necessary for the independent performance of their functions.

3. Counsel, experts and witnesses before the Court shall enjoy the privileges and immunities necessary for the independent exercise of their duties.

4. With the exception of those referred to in paragraph 1 of this article, the privileges, immunities and facilities granted may be revoked or waived by a decision taken by an absolute majority, by secret ballot, of the General Assembly of Judges of the Court.

Article 24

Remuneration

All permanent members of the Court, as defined in article 5 (2) and (3) shall receive remuneration.

Judges who sit only on a temporary basis shall receive a daily allowance during the period in which they perform their functions. They may continue to receive a salary payable in respect of another position occupied by them.

Article 25

Working languages

The working languages of the Court shall be English and French.

Article 26

Rules of the Court

The rules of organization, functioning and procedure of the Court not set out in this Statute shall appear in the regulations and the rules of procedure of the Court.

Draft regulations and rules of procedure of the Court shall be prepared by the General Assembly of Judges. They shall be adopted by the General Assembly of the States parties, which may amend them.

The rules and regulations adopted in accordance with the preceding paragraph may be amended under the same conditions.

PART 3. JURISDICTION AND SUBMISSION TO THE COURT

TITLE I. JURISDICTION OF THE COURT

Article 27

Jurisdiction ratione materiae

The Court has jurisdiction in accordance with this Statute with respect to the following crimes:

(a) The crime of genocide;

(b) Crimes against humanity;

(c) The crime of aggression;

(d) Serious violations of the laws and customs applicable in armed conflicts;

(e) - Grave breaches of the four Geneva Conventions of 12 August 1949,

- Grave breaches of article 3 common to the four Geneva Conventions of 12 August 1949.

Article 28

Genocide

Genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnic, racial or religious group as such:

(a) Killing members of the group;

(b) Causing serious bodily or mental harm to members of the group;

(c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;

(d) Imposing measures intended to prevent births within the group;

(e) Forcibly transferring children of the group to another group.

Article 29

Crimes against humanity

Crimes against humanity mean any of the following acts committed on a massive and systematic scale against a group of the civilian population on political, philosophical, racial, ethnic or religious grounds:

(a) Wilful killing;

(b) Enslavement;

(c) Kidnapping followed by the disappearance of the person;

(d) Deportation;

(e) Arbitrary detention;

(f) Rape;

(g) Any form of persecution on these grounds;

(h) Torture or any other inhuman act causing great suffering or serious injury to physical or mental integrity or health.

Article 30

Crime of aggression

The crime of aggression means planning, preparation, initiation or waging of a war of aggression, or a war in violation of international treaties, agreements or assurances, or participation in a common plan or conspiracy for the accomplishment of any of the foregoing acts.

Article 31

Serious violations of the laws and customs of war

The following acts are considered serious violations of the laws and customs of war:

(a) Killing or wounding treacherously individuals belonging to the hostile nation or army;

(b) Killing or wounding an enemy who, having laid down arms, or having no longer means of defence, has surrendered at discretion;

(c) Declaring that no quarter will be given;

(d) Making improper use of a flag of truce, of the national flag or of the military insignia and uniform of the enemy, of the uniform of multinational forces in the context of a peace-making or peace-keeping operation, as well as the distinctive badges of the Geneva Convention;

(e) Destroying or seizing the enemy's property, unless such destruction or seizure be imperatively demanded the necessities of war;

(f) Declaring abolished, suspended or inadmissible in a court of law the rights and actions of the nationals of the hostile party;

(g) Compelling the nationals of the hostile party to take part in the operations of war directed against their own country, even if they were in the belligerent's service before the commencement of the war;

(h) Attacking or bombarding by whatever means towns, villages, dwellings or buildings which are undefended;

(i) Pillaging a town or place, even when taken by assault;

(j) Using certain categories of projectiles which are explosive or charged with fulminating or inflammable substances, such as those referred to in the St. Petersburg Declaration of 1868;

(k) Using bullets which expand or flatten easily inside the human body, as defined in the Hague Declaration of 29 July 1899;

(l) Using asphyxiating, poisonous or other gases and bacteriological methods as defined in the Geneva Protocol of 1925, as well as microbial agents or toxins, as defined in the 1972 Biological Weapons Convention;

(m) Using chemical weapons as defined in article 2 of the 1993 Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction;

(n) Directing attacks against historical monuments, works of art or clearly recognized places of worship constituting the cultural heritage, unless such attacks be imperatively demanded by the necessities of war.

Article 32

Grave breaches of the Geneva Conventions

1. Grave breaches of the Geneva Conventions of 12 August 1949 are:

(a) With regard to the wounded and sick in armed forces in the field and wounded, sick and shipwrecked members of armed forces at sea: wilful killing, torture or inhuman treatment, including biological experiments, wilfully causing great suffering or serious injury to body or health, and extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly;

(b) With regard to prisoners of war: wilful killing, torture or inhuman treatment, including biological experiments, wilfully causing great suffering or serious injury to body or health, compelling a prisoner of war to serve in the forces of the hostile Power, or wilfully depriving a prisoner of war of the rights of fair and regular trial prescribed in the Conventions referred to in this article;

(c) With regard to the protection of civilian persons in time of war: wilful killing, torture or inhuman treatment, including biological experiments, wilfully causing great suffering or serious injury to body or health, unlawful deportation or transfer or unlawful confinement of a protected person, compelling a protected person to serve in the forces of a hostile Power, or wilfully depriving a protected person of the rights of fair and regular trial prescribed in the Conventions referred to in this article, taking of hostages, and extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly.

2. Grave breaches of article 3 common to the four Geneva Conventions of 12 August 1949 are, at all times and in any place, in the case of an armed conflict not of an international character occurring on the territory of one of the States parties, the following acts against persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention or any other cause:

(a) Violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;

(b) Taking of hostages;

(c) Outrages upon personal dignity, in particular humiliating and degrading treatment;

(d) The passing of sentences and the carrying out of executions without previous judgement pronounced by a regularly constituted court affording all the judicial guarantees which are recognized as indispensable by civilized peoples.

Article 33

Jurisdiction ratione temporis

1. The Court has jurisdiction only in respect of acts committed after the date of entry into force of this Statute.

When a State becomes party to this Statute after its entry into force, the Court has jurisdiction only in respect of acts committed by its nationals or on its territory or against its nationals after the deposit by that State of its instrument of ratification or accession.

A non-party State may, however, by an express declaration deposited with the Registrar of the Court, agree that the Court has jurisdiction in respect of the acts that it specifies in the declaration.

2. The Court has no jurisdiction in respect of crimes for which, even if they have been committed after the entry into force of this Statute, the Security Council, acting under Chapter VII of the Charter of the United Nations, has decided before the entry into force of this Statute to establish an ad hoc international criminal tribunal.

The Security Council may, however, decide otherwise.

Article 34

Consent of States

The jurisdiction of the Court extends to all crimes referred to in articles 27 to 32 when the following have expressed their agreement:

(a) The State(s) on whose territory the acts were committed;

(b) The State(s) of the nationality of the victim(s) of those acts; and

(c) The State(s) of the nationality of the person(s) suspected of having committed the acts.

Article 35

Concurrent jurisdiction

The Court has no jurisdiction under this Statute when:

(a) The acts mentioned in the submission to the Court are still being investigated by a State and the investigation is not manifestly intended to relieve the person concerned of criminal responsibility;

(b) The acts mentioned in the submission to the Court have already been duly investigated by a State and the decision not to institute proceedings was taken by that State when it had knowledge of all the acts mentioned in the submission and the decision was not motivated by a manifest willingness to relieve the persons concerned of any criminal responsibility;

(c) Any person(s) mentioned in the submission to the Court have already been acquitted or convicted by a final ruling in a State for the acts involved unless the decision failed to take account of all facts contained in the submission or the proceedings were conducted in the State concerned by evading the rule of international law for the manifest purpose of relieving the persons concerned of criminal responsibility.

Article 36

Verification of jurisdiction

The Court shall satisfy itself that it has jurisdiction in any case brought before it. Any State party competent to institute proceedings in connection with all or part of the acts brought before the Court, and any person named in the document of submission to the Court, may challenge the jurisdiction of the Court. The forms and periods set out in article 39, paragraphs 2 and 3, shall apply.

TITLE II. SUBMISSION TO THE COURT

Article 37

Submission by a State

1. A State party may lodge a complaint with the Prosecutor of the Court specifying that acts constituting crimes referred to in article 27 appear to have been committed.

2. As far as possible a complaint shall specify the circumstances of the alleged crime or crimes and the identity and whereabouts of any suspect. It shall be accompanied by such evidence as is available to the complainant State.

3. The Prosecutor of the Court shall inform the Security Council of all complaints lodged with him under this article.

Article 38

Role of the Security Council

1. Notwithstanding article 34, the Security Council, acting under Chapter VII of the Charter of the United Nations, can decide to refer a situation or acts constituting crimes to the Prosecutor of the Court when one or more of the crimes referred to in article 27 appear to have been committed.

Notification of the Security Council decision to the Prosecutor of the Court shall be accompanied by all evidence available to the Council.

2. A complaint of or directly related to a crime of aggression referred to in articles 27 (c) and 30 may not be brought unless the Security Council has first determined that a State has committed the act of aggression which is the subject of the complaint, in accordance with Chapter VII of the Charter of the United Nations.

3. No prosecution may be commenced under this Statute arising from a situation which is being dealt with by the Security Council as a threat to or breach of the peace or an act of aggression under Chapter VII of the Charter, unless the Security Council otherwise decides.

TITLE III. CHALLENGE OF A SUBMISSION TO THE COURT

Article 39

Challenge of a submission to the Court

1. The Prosecutor of the Court, before initiating an investigation, shall notify the States parties of any matter submitted to the Court in accordance with articles 37 and 38. The States parties shall so inform the persons referred to by name in the submission.

2. A State party which wishes to continue to proceed with a prosecution or which has already proceeded with one in the case brought before the Court may then challenge the submission of the case within a period of one month after notification of the submission has been sent under paragraph 1 of this article. The person referred to by name in the submission may also dispute it under the same conditions.

As soon as the Court has received notice that the submission is being challenged under the preceding subparagraph, article 40, paragraph 2, shall apply.

3. The State party or person challenging the submission to the Court may present his arguments either in writing or at a hearing held at his request. The Court may also decide of its own motion or at the request of the Prosecutor of the Court to hold such a hearing.

The decision shall be handed down by the Trial Chamber after it has heard the State or person disputing the submission and the Prosecutor. The State or person in question or the Prosecutor can appeal the decision handed down by the Trial Chamber before the Appeals Chamber.

The rules set forth in the preceding subparagraphs of this paragraph shall apply to any dispute brought before the Court under this article, during both the initial review of the dispute provided for in paragraph 6 of this article and the subsequent reviews provided for in paragraph 7 hereof.

4. The Court may decide, having regard to the principle of complementarity referred to in the preamble of this Statute, that a case brought before it is inadmissible for the reasons stated in article 35 (a), (b) and (c).

5. In every case, the State or person challenging a submission to the Court under paragraph 2 of this article shall provide all information concerning the conduct of the investigations and the judicial procedures which may support a finding of inadmissibility in the case submitted to the Court.

6. If the Court recognizes the plea of inadmissibility by the State or person challenging the submission on the grounds of article 35 (a), it shall declare the case before it provisionally inadmissible. In that event, the Prosecutor may question the State proceeding with the prosecution as to the status of the investigation and the action that will be taken on it.

If the Court recognizes the plea of inadmissibility by the State or person challenging the submission on the grounds of article 35 (b) or (c), it shall declare the case inadmissible.

7. In the case of the situation described in the first paragraph of paragraph 6 hereof, the Prosecutor may at any time refer back to the Court the same acts if it appears to him that the conditions required in article 35 (a) no longer exist. The Chamber which has made the initial finding that the Court lacks jurisdiction in the matter shall rule on the Prosecutor's request. After it has heard the arguments of the Prosecutor and the State or person concerned, it may either find that the conditions of article 35 (a) have been fulfilled or authorize the Prosecutor to initiate a prosecution in accordance with this Statute.

In the case of the situation envisaged in the second paragraph of paragraph 6 hereof, the Prosecutor of the Court may, if new facts arise, submit a request to the Court for a review of the decision of inadmissibility. The chamber which has handed down the initial decision of inadmissibility shall decide on the Prosecutor's request. After it has heard the arguments of the Prosecutor and the State or person concerned, it can either confirm its decision of inadmissibility or authorize the Prosecutor to initiate a prosecution before it in accordance with this Statute.

PART 4. PREPARATORY PHASE BEFORE THE TRIAL

TITLE I. INVESTIGATION AND PROSECUTION

Article 40

Initiation of the investigation

1. On receiving a complaint under article 37 or 38, the Prosecutor of the Court may:

(a) Initiate an investigation at the end of the one-month period stipulated in article 39 (2);

(b) Decide that there is no possible de jure or de facto basis for a prosecution under this Statute, in which case he shall so inform the Preliminary Investigations Chamber of the Court and the State which lodged the complaint under article 37 or the Security Council, if the matter was submitted to the Court under article 38 (1).

2. If the submission to the Court is challenged under article 39, the Prosecutor may not initiate an investigation before the Court has issued a final ruling thereon.

Article 41

Provisional measures

Notwithstanding the one-month period provided for in article 39 (2) and the provisions of article 40 (2), the Prosecutor may, in accordance with the relevant provisions of the present Statute, take any measure that is strictly necessary to preserve the evidence and prevent persons who may be involved from escaping. To that end, he may request the cooperation of any State party.

Article 42

Closing of the case

1. Following the investigation, the Prosecutor may close the case which has been submitted to him if he concludes:

(a) That no case exists;

(b) That the case is not admissible for the reasons listed in article 35, provided, however, that the Court has not already ruled on this issue in accordance with article 39.

2. The Prosecutor shall so inform the Preliminary Investigations Chamber, the State which lodged the complaint under article 37 or the Security Council, if the matter was submitted to the Court under article 38 (1). He shall state the nature and origin of the complaint and the reasons why he is not instituting proceedings.

States which, during the investigation, in accordance with titles II and III of this part, have been charged with executing a warrant or asked to cooperate, shall also be informed that the Prosecutor has closed the case. All warrants issued and all requests for cooperation shall immediately cease to have effect.

Article 43

Reply to the closing of the case

1. When the Prosecutor has decided not to initiate an investigation, in accordance with article 40 (1) (b), or not to institute proceedings following an investigation in accordance with article 42 (1), the Preliminary Investigations Chamber may, either at the request of the State which lodged the complaint under article 37 or at the request of the Security Council, if the matter was submitted to the Court under article 38 (1), ask him to reconsider his decision. It may do so only once.

2. When new information is brought to his attention regarding the facts in respect of which he decided not to initiate an investigation or not to institute proceedings, the Prosecutor may reconsider his decision.

Article 44

Indictment

1. If, following the investigation, the Prosecutor concludes that a case does exist against one or more of the persons named, he shall file with the Registrar of the Court an indictment containing, in respect of each of the persons referred to, their name, a statement of the allegations of fact against them, and the characterization of these facts in accordance with articles 27 to 32.

The indictment shall be accompanied by all the evidence collected by the Prosecutor. Other evidence may be freely added by the Prosecutor up until the time when the indictment is considered by the Preliminary Investigations Chamber. However, without prejudice to the provisions of paragraph 3 of this article, no evidence submitted to the Registrar for purposes of accompanying the indictment may be withdrawn by the Prosecutor.

2. The Prosecutor may amend the indictment up until the time it is considered by the Preliminary Investigations Chamber.

3. The Prosecutor may also withdraw an indictment together with all the accompanying evidence up until the time when the indictment is considered by the Preliminary Investigations Chamber.

In that event the Preliminary Investigations Chamber may, under the conditions provided for in article 43 (1), ask the Prosecutor to reconsider his decision.

Article 45

Consideration of the indictment by the Preliminary Investigations Chamber

1. The Preliminary Investigations Chamber shall proceed to consider the indictment and any amendment thereto together with all the accompanying evidence.

2. It shall take a decision:

(a) On the admissibility of the case on the basis of the reasons listed in article 35, if the Court has not yet ruled on this issue;

(b) On the serious nature of the charges against the person or persons named in the indictment with respect to an offence within the Court's jurisdiction.

Article 46

Further investigation

1. After having considered the indictment in accordance with article 45, the Preliminary Investigations Chamber may defer ruling and may ask the Prosecutor to conduct a further investigation.

2. The Preliminary Investigations Chamber may indicate to the Prosecutor which issues it feels need to be investigated further.

Article 47

Non-confirmation

1. After considering the indictment, or after the further investigation requested in accordance with article 46, the Preliminary Investigations Chamber may decide not to confirm the indictment. This decision must be based on the provisions of article 45 (2).

All warrants issued prior to this decision of non-confirmation shall cease immediately to have effect.

2. The Registrar of the Court shall immediately notify the persons named in the indictment, the Prosecutor, the States which, in accordance with titles II and II of this part, have been charged with executing a warrant or asked to cooperate and either the State which lodged the complaint under article 37, or the Security Council, if the matter was submitted to the Court under article 38 (1), of the non-confirmation of the indictment.

3. Non-confirmation of an indictment under this article shall not prevent the Prosecutor from preparing, in accordance with article 44, a new indictment on the basis of facts which were the grounds for the initial indictment which was not confirmed, in so far as additional supporting evidence is provided.

Article 48

Confirmation hearing

1. If after considering the indictment, or after the further investigation requested in accordance with article 46, the Preliminary Investigations Chamber proposes to confirm the indictment it shall so inform the Prosecutor and the persons named in the indictment and shall indicate to them that it will hold a hearing to consider the charges contained in the indictment.

The hearing shall be held at a date determined by the Preliminary Investigations Chamber, one month, at the earliest, from the day on which the persons named in the indictment were notified that the Preliminary Investigations Chamber proposed to confirm the indictment, and no later than three months from that same date.

2. The Registrar of the Court shall serve the Prosecutor and the persons named in the indictment with a summons to appear, containing the indictment, the place, date and time of the hearing and mentioning the rights which the suspects are recognized as having in accordance with article 51.

3. The persons named in the indictment are entitled to receive from the Registrar of the Court certified copies of all the evidence accompanying the indictment.

4. During the hearing organized before it, the Preliminary Investigations Chamber shall consider the indictment and the accompanying evidence. It shall hear the arguments of the Prosecutor, followed by those of the persons named in the indictment, the latter always being heard last.

5. Following the hearing and after deliberations, the Preliminary Investigations Chamber may:

(a) Confirm the indictment in its entirety;

(b) Confirm only part of the indictment and amend it, either by declaring the case inadmissible in part, for the reasons listed in article 35, if the Court has not already ruled on this issue, or by withdrawing certain charges deemed not sufficiently serious, or by giving some facts another characterization, in accordance with articles 27 to 32;

(c) Refuse to confirm the indictment.

It must give the reasons for its decision based on the provisions of article 45 (2).

6. When it confirms the indictment in its entirety or in part, the Preliminary Investigations Chamber must commit the accused to the Trial Chamber for trial on the facts referred to in the confirmation decision and with the characterization accepted in that decision. It shall uphold the warrants for the arrest and transfer of the accused or the warrants for judicial supervision issued earlier. It may, by taking a special decision, decide not to uphold these warrants or decide to amend the warrants for judicial supervision.

If it does not confirm the indictment, all the warrants issued prior to the decision of non-confirmation shall cease immediately to have effect.

7. The Registrar of the Court shall promptly inform the accused, the Prosecutor, the States which, in accordance with titles II and III of this part, have been charged with executing a warrant or asked to cooperate and either the State which lodged the complaint under article 37 or the Security Council, if the matter was submitted to the Court under article 38 (1), of the Preliminary Investigations Chamber's decision.

Article 49

Persons who have fled or cannot be found

1. When the Preliminary Investigations Chamber proposes to confirm an indictment, but one or more of the persons named in the indictment has fled or cannot be found, it may still hold a hearing under the conditions provided for in article 48.

2. When it confirms the indictment, in its entirety or in part, against a person who has fled or cannot be found, the Preliminary Investigations Chamber shall issue a warrant to search for, arrest and transfer the accused, which is tantamount to committing him to the Trial Chamber for trial. This warrant must contain, in addition to the particulars listed in article 55, the statement of facts referred to in the confirmation decision, with the characterization accepted in that decision.

The warrant shall be disseminated by the Registrar of the Court using all appropriate means. When the person is found, the warrant shall be executed as a

warrant of arrest and transfer, in accordance with the provisions of title II of this part.

Article 50

Rights of victims

1. Anyone who has personally suffered direct injury caused by a crime submitted to the Court may inform the Registrar of the Court in writing of the acts having caused injury to him and the nature and amount of the losses which he has sustained.

2. When a hearing is held under article 48, the Registrar of the Court shall transmit to the Preliminary Investigations Chamber the correspondence received from victims pursuant to paragraph 1 of this article.

3. When it confirms the indictment in its entirety or in part, the Preliminary Investigations Chamber may order the provisional seizure of all or part of the property of the person committed for trial, if it believes that such a measure is necessary to compensate the victims who have come forward in accordance with paragraph 1 of this article.

In that event, the Preliminary Investigations Chamber shall ask the Prosecutor to secure the cooperation of the States in whose territory the provisionally seized property is situated, requesting them, inter alia, to freeze assets and to appoint official receivers.

The provisions of the preceding subparagraph shall also apply in the situations described in article 49.

Article 51

Rights of suspects

1. Anyone suspected of committing a crime within the meaning of this Statute shall be entitled:

(a) To be presumed innocent until proved guilty;

(b) To remain silent without such silence being taken into consideration by the Court at a later stage in the determination of his guilt or innocence;

(c) Not to be compelled to testify against himself or to confess guilt;

(d) To be assisted promptly by a lawyer of his own choosing, or, if he does not have sufficient means to pay for one, by a lawyer appointed by the Preliminary Investigations Chamber of the Court;

(e) To be informed of the charges against him and questioned in a language which he understands, and, to this end, to have the free assistance of a competent interpreter, and to be provided free of charge with a translation of the documents on the basis of which he is being questioned or that show why a measure infringing upon his liberty or property has been proposed.

2. Anyone suspected of committing a crime within the meaning of this Statute must, before being questioned, or when a measure infringing upon his liberty or property has been proposed and brought to his attention, be fully informed of the charges against him and the rights to which he is entitled under paragraph 1 of this article.

3. A person suspected of committing a crime within the meaning of this Statute shall, as soon as he is involved in an investigation or prosecuted under this Statute, be entitled to collect all of the evidence which he deems necessary for his defence.

He may either collect this evidence himself or request the Preliminary Investigations Chamber of the Court to enjoin the Prosecutor to accomplish certain acts, seeking, where necessary, cooperation from any State party. In that event, the Preliminary Investigations Chamber shall have a period of two months in which to respond to the accused's request.

4. The Prosecutor shall be required to accomplish any act which the Preliminary Investigations Chamber enjoins him to carry out pursuant to paragraph 3 of this article.

If the Preliminary Investigations Chamber rejects a request made pursuant to paragraph 3 of this article, its decision must be based on the futility of the act requested in the light of the patently dilatory nature of the request.

Notice of the decision by the Preliminary Investigations Chamber rejecting the request, which is not subject to appeal, must, in accordance with paragraph 3 of this article, be served on the person involved within two months following the date of his request. No other request may be made by the accused until the Preliminary Investigations Chamber has taken its decision or the two-month period expires.

5. When an indictment is drawn up pursuant to article 44, the evidence collected in accordance with this article shall be attached to the indictment and shall be subject to the same conditions.

TITLE II. ARREST OR RESTRICTION OF LIBERTY PRIOR TO THE JUDGEMENT

SUBTITLE 1. GENERAL PRINCIPLES

Article 52

General principle

1. Any person implicated under this Statute shall remain free during the proceedings, unless he is placed under judicial supervision or taken into custody prior to the judgement, in accordance with the rules and conditions set forth below.

2. Persons aged 13 to 18 at the time of the proceedings may be taken into custody prior to the judgement only under exceptional circumstances.

Article 53

Judicial supervision

1. The decision to place a person under judicial supervision prior to the judgement shall be taken by the Preliminary Investigations Chamber of the Court at the request of the Prosecutor.

The Preliminary Investigations Chamber may also place a person under judicial supervision when it declines to grant the Prosecutor's request that he be taken into custody, but wishes to impose certain restrictions on his freedom, or when it releases a person and wishes to impose certain restrictions on his release.

2. When it issues a warrant for judicial supervision, the Preliminary Investigations Chamber subjects a person to one or more obligations, in particular:

(a) Not to go outside the territorial limits established by the Preliminary Investigations Chamber without its explicit agreement;

(b) Not to leave his place of abode or a residence established by the Preliminary Investigations Chamber except under the conditions and for the reasons determined by it;

(c) Not to frequent certain places and to refrain from contact with certain persons designated by the Preliminary Investigations Chamber;

(d) To respond to attendance notices issued by any authority or qualified person designated by the Preliminary Investigations Chamber;

(e) Not to engage in certain professional activities;

(f) To pay a security deposit, the amount, time-limits and payment terms of which shall be determined by the Preliminary Investigations Chamber;

(g) To hand over to the Registrar of the Court all documents establishing his identity, including his passport;

(h) To furnish securities in rem or in personam designed to guarantee the rights of the victims.

3. Persons aged 13 to 18 at the time of the proceedings may also be placed in appropriate educational institutions.

Article 54

Pre-trial detention

1. The decision to detain a person prior to the judgement shall be taken by the Preliminary Investigations Chamber of the Court at the request of the Prosecutor. The Preliminary Investigations Chamber must give a reason for its decision based on paragraphs 2 and 3 of this article.

2. Under this Statute, a person may be detained prior to the judgement when, notwithstanding his assertions to the contrary, there are serious reasons for believing that he has participated in a crime, either as perpetrator or as accomplice, and that taking him into custody is the only way to:

(a) Preserve the evidence or material clues;

(b) Avoid pressure on witnesses and victims;

(c) Prevent fraudulent consultation with other possible perpetrators and accomplices;

(d) Protect him;

(e) Put a stop to the crime or prevent its recurrence;

(f) Ensure that he remains at the disposal of the Court if the risks of flight appear to be high.

3. Detention prior to the judgement may also be decided on if the person wilfully evades the obligations of judicial supervision to which he has been subjected under article 53.

Article 55

Formal requirements

1. The Prosecutor's written request for the issuance of a warrant of arrest or restriction of liberty prior to the judgement must contain the name of the person concerned, a statement of the charges against him and the reasons for which the warrant is necessary, along with a list of States parties capable of executing the warrant. The Preliminary Investigations Chamber shall request the Prosecutor to provide it with all available evidence.

2. The warrant issued by the Preliminary Investigations Chamber must contain:

(a) The name of the person concerned;

(b) A statement of the charges against him;

(c) The reasons for the issuance of the warrant;

(d) A statement of the suspect's rights under article 51 (1);

(e) A statement of the suspect's right to request, at any time, either his release or the suspension or amendment of judicial supervision, pursuant to article 56.

3. The States parties listed in the Prosecutor's request shall be notified of a warrant issued by the Preliminary Investigations Chamber. The warrant shall take effect as soon as it is brought to the attention of the person concerned by the national authorities charged with executing it.

Any person for whom the Preliminary Investigations Chamber issues a warrant of arrest or restriction of liberty must receive a certified copy of the warrant and must be promptly brought before the appropriate judicial authority of the State in which the warrant is executed. The national judicial authority shall ensure that the warrant does, in fact, apply to that person and that it meets the formal requirements laid down in this Statute.

Article 56

Appeal

1. At any time during the proceedings, the Preliminary Investigations Chamber may, either of its own motion or at the request of the person concerned or the Prosecutor, release the person concerned or suspend or amend the terms of judicial supervision.

Even in the absence of any request made under the preceding paragraph, the warrant issued by the Preliminary Investigations Chamber must be reviewed every four months, failing which it shall cease to have effect.

2. When the Preliminary Investigations Chamber receives a request for release under paragraph 1 of this article, it shall have 15 days in which to respond, failing which the person concerned shall be released immediately. The Registrar of the Court shall promptly notify the Prosecutor, the person in custody and the State in which he is held of the decision of the Preliminary Investigations Chamber.

The Prosecutor or the person concerned may appeal within eight days from the notification of the decision of the Preliminary Investigations Chamber. The appeal shall be brought before the chamber having responsibility for overseeing cases of detention, which must take a decision as soon as possible, and in no case later than 15 days after the appeal has been lodged, failing which the person in custody shall automatically be released.

No one may submit a further request for release within one month from the date of the final decision on the preceding request.

The decisions of the chamber having responsibility for overseeing cases of detention shall be notified in accordance with the first subparagraph of paragraph 2 of this article.

3. If the Preliminary Investigations Chamber decides to release the person concerned because his arrest or detention was unlawful, it may award him compensation.

4. The decisions of the Preliminary Investigations Chamber to release a person or to suspend or amend his judicial supervision shall be executed by the State party in which the person concerned is being held or which is responsible for such judicial supervision, as soon as it has received notification through the Registrar of the Court.

SUBTITLE 2. WARRANTS OF ARREST OR RESTRICTION OF LIBERTY PRIOR TO THE JUDGEMENT

Article 57

General principles

1. Warrants for judicial supervision may be issued at any time before trial.

2. Prior to the confirmation of the indictment, the Preliminary Investigations Chamber may issue warrants of provisional arrest and detention after the investigation has been initiated.

3. While it is considering the confirmation of the indictment, the Preliminary Investigations Chamber may issue warrants of arrest and transfer.

Article 58

Warrants of arrest and detention

1. Under a warrant of arrest and detention, the person shall be arrested by the competent national authorities and brought before the appropriate national judicial authority pursuant to article 55 (3).

The person shall then be taken into custody, pursuant to the warrant of the Preliminary Investigations Chamber, in an appropriate place of detention in the State responsible for executing the warrant.

2. Any person for whom a warrant of arrest and detention is issued shall be released if the indictment concerning him, accompanied by a warrant of arrest and transfer replacing the initial warrant, are not served on him within 60 days from the date of his arrest.

3. Notwithstanding the provisions of paragraph 2 of this article and article 66 (5), the effects of a warrant of arrest and detention shall not be interrupted by the actions challenging the submission of cases to the Court provided for in article 69.

Article 59

Warrant of arrest and transfer

1. If the accused is already in custody under a warrant of arrest and detention, pursuant to article 58, the warrant of arrest and transfer shall replace the initial warrant.

The warrant of arrest and transfer and the confirmed indictment shall be served on the accused in his place of detention. He shall be brought before the appropriate national judicial authority pursuant to article 55 (3).

The accused shall be kept in custody and transferred to the Court in the conditions provided for in Part 4, Title III, of this Statute.

2. If the accused is not in custody and his place of residence is known, he shall be arrested by the competent national authorities and brought before the appropriate national judicial authority pursuant to article 55 (3).

The accused shall be taken into custody, pursuant to the warrant of the Preliminary Investigations Chamber, in an appropriate place of detention in the State responsible for executing the warrant and shall be transferred to the Court in the conditions provided for in Part 4, Title III, of this Statute.

3. If the accused is a fugitive, the warrant of arrest and transfer issued by the Preliminary Investigations Chamber shall have the effect of a warrant to search for the wanted person and shall be disseminated by all appropriate means. Once the accused is apprehended, the authorities shall proceed in accordance with paragraph 2 of this article.

4. A warrant of arrest and transfer shall remain in effect until the date of the judgement. Its effects shall not be interrupted by the actions challenging the submission of cases to the Court provided for in article 69.

TITLE II. COOPERATION AND JUDICIAL ASSISTANCE

Article 60

Obligation to cooperate

1. States parties shall respond without delay to any request for cooperation submitted by the Court under this Statute. They may request the Court to provide any additional information which they consider necessary to enable them to respond to the request.

2. The obligation to cooperate provided for in paragraph 1 of this article shall be discharged in accordance with the conditions set out in this Statute.

3. Subject to the provisions of paragraph 2 of this article, the procedure by which a State party discharges its obligation to cooperate shall be governed by its internal law.

4. The Preliminary Investigations Chamber of the Court may bring to the attention of the Security Council any failure to discharge the obligation to cooperate provided for in paragraph 1 of this article which obstructs the performance of the Chamber's functions.

Article 61

Working languages

1. Requests for cooperation addressed to States parties by the Court shall be drafted in one of the two working languages referred to in article 25, in accordance with the choice made by that State at the time of deposition of its instruments of ratification.

2. The same shall apply to papers and documents transmitted to the Court by States parties in response to the requests referred to in paragraph 1 of this

article. The Court may also request the transmission of documents in their original language.

Article 62

Competent national authority

1. Each State party shall designate, at the time of deposition of its instruments of ratification, the national authority competent to receive requests for cooperation transmitted by the Court and the various authorities to which requests for cooperation may be submitted, as determined by the urgency of the request and the means of its transmission.

2. However, a State party may amend the list of competent national authorities subsequent to ratification, but such amendment shall not be opposable until six months have elapsed from the date of its deposition.

Article 63

Transmission of requests

Requests for cooperation shall be transmitted to States by the Registrar. The replies of States shall be addressed to him, as shall any accompanying documents or papers.

Article 64

Cooperation with States non-parties

States non-parties may offer their assistance to the Court under conditions determined by them or pursuant to a specific agreement with the Court.

SUBTITLE 1. TRANSFER

Article 65

Basic conditions of transfer

The extradition legislation of a requested State shall be opposable by that State to any request for transfer of the accused or the suspect to the Court.

If the requested State refuses to carry out a transfer, it shall, at the request of the Court, submit the case to the competent authorities in order that judicial proceedings may be instituted if grounds exist.

Article 66

Transfer formalities

1. The request for transfer, in written form and signed by the Prosecutor, shall be addressed by the Registrar to the competent authority of the requested State designated in accordance with article 62.

2. The request for transfer, accompanied by the documents specified in paragraphs 3 and 4 of this article, may also be addressed to all the States parties in whose territory the suspect or accused may be found, as well as to all the States non-parties willing to comply with the request.

3. In all cases the request for transfer shall be accompanied by:

(a) A statement of the facts in respect of which the transfer is requested, the date and place of their commission and their legal characterization in accordance with articles 27 to 32;

(b) The fullest possible description of the suspect or accused and any other information which may help to determine his identity;

(c) If possible, the place where the suspect or accused may be found.

4. The request for transfer shall also be accompanied by:

(a) Either the warrant for arrest and transfer, together with the indictment, in an original copy or a copy certified by the Registrar, if the request for transfer is made after the filing of the indictment;

(b) Either the warrant for arrest and detention, in the original copy or a copy certified by the Registrar, if the request for transfer is made before the filing of the indictment, article 58, paragraph 2, being then applicable.

5. In an emergency the request for transfer referred to in paragraph 1 of this article may be transmitted to a State by any means producing a written communication. It shall be accompanied by a statement of the facts and shall indicate the existence of one of the warrants referred to in paragraph 4 of this article.

The person named in a request for transfer transmitted in this way may be arrested and placed in detention in the manner prescribed for the execution of the warrant mentioned in the said request. This person shall be released automatically if the request for transfer accompanied by the documents referred to in paragraphs 3 and 4 of this article does not reach the State which is detaining him within 30 days from the date of his arrest. However, the person may consent to his transfer to the Court before the expiry of this period if the legislation of the requested State so allows, in which case that State shall proceed to transfer him to the Court as soon as possible.

The release of this person pursuant to the preceding paragraph shall not prevent his re-arrest and transfer to the Court if a request for transfer satisfying the requirements of paragraphs 3 and 4 of this article arrives subsequently.

Article 67

Delivery of the suspect or accused

1. The competent authority of the requested State and the Registrar of the Court shall agree on the date and modalities of the transfer of the person concerned to the seat of the Court or to the place which it specifies.

2. The duration of the person's detention in the territory of the requested State shall be communicated to the Court and deducted in full from any sentence imposed by the Court.

3. The requested State may, with the consent of the Preliminary Investigations Chamber, which shall rule after having heard the Prosecutor, defer the transfer of the person in question if he is being prosecuted or serving a sentence in respect of facts different from those for which he is being sought.

4. If the requested State does not request deferment of the transfer or if such deferment is denied by the Preliminary Investigations Chamber, that State may request the Preliminary Investigations Chamber to return the person concerned after completion of his trial by the Court, in order that he may be prosecuted or serve his sentence in respect of facts different from those for which he has finally been sentenced by the Court.

On the completion of the proceedings or after the person has served his sentence, he may be transferred back to the Court or to the place which it specifies, in order to serve the sentence handed down by the Court.

5. Articles found in the possession of the suspect or accused shall be handed over to the Court, at its request, at the time of his transfer. This may be done even if the transfer cannot take place owing to the death or escape of the individual sought. The Court shall return such articles free of charge as soon as possible after the trial, if they are the property of a third party or the requested State.

Article 68

Transit

1. Transit through the territory of one of the States parties shall be granted on application to the competent authority designated in accordance with article 62.

2. The transit of a national of the transit State may be refused.

3. Subject to the provisions of paragraph 4 of this article, the documents referred to in article 66, paragraphs 3 (a) and 4 (a) and (b), shall be produced.

4. If air transport is used, the following provisions shall apply:

(a) When no intermediate landing is envisaged, the Court shall notify the State over whose territory the aircraft will fly and certify the existence of one of the documents referred to in article 66, paragraph 4;

(b) In the event of an unscheduled landing or when a landing is envisaged, the Court shall submit a regular transit request as provided for in paragraph 3 of this article.

5. The transit of the person concerned shall not be effected through a territory where there are grounds for believing that his life or liberty may be threatened by reason of his race, religion, nationality or political opinions.

Article 69

Concurrent requests for transfer or extradition

1. The States parties shall undertake to give priority to requests for transfer submitted by the Court over requests for extradition submitted by other States parties.

2. If the State party to which the request for transfer is addressed has also received a request for extradition from a State party to which it is bound by an extradition agreement, it shall rule on that request for extradition, unless the Court, pursuant to article 39, has already rejected the challenge to submission to the Court made by the State requesting the extradition.

3. The State requesting the extradition may, if it has not already contested submission to the Court pursuant to article 39, request the Court to withdraw its request for transfer, on the basis of the principle of complementarity stated in the preamble to this Statute. The person named in the request for transfer may, under the same conditions, challenge submission to the Court and seek the withdrawal of the request for transfer.

Taking into account the facts and the identity of the persons named in the request for transfer, the Court shall rule in accordance with article 35, paragraphs (a) and (c), and article 39, paragraphs 3, 5, 6 and 7. The warrants issued earlier by the Court shall remain in force and the States parties shall be bound to cooperate.

4. If the State detaining the person concerned rejects the request for extradition, it shall so inform the Court without delay. The request referred to in paragraph 3 of this article shall then cease to have effect, and the Court shall note this fact in a decision.

5. If the Court decides not to grant the request submitted under paragraph 3 of this article, the Registrar shall immediately so inform the requested State, and the demand for extradition submitted by the requesting State shall cease to have effect. The person concerned shall then be transferred to the Court as soon as possible.

6. If the State detaining the person concerned decides to grant the request for extradition before the Court has finally ruled on the request submitted under paragraph 3 of this article, it may either keep the person concerned at its disposal or transfer him to the Court, in which case it shall notify its decision in favour of extradition to the requesting State and to the Court.

If the Court subsequently accepts the request submitted by the requesting State in accordance with paragraph 3 of this article and if the person concerned has been transferred to it pursuant to the preceding paragraph, it shall order the return of the person concerned to that State.

For the purposes of prosecution the requesting State shall be bound by the decision on extradition taken by the requested State and by all other provisions of the extradition treaty between the two States. The duration of the person's detention in the requested State and at the seat of the Court or in the place which it specifies shall be deducted in full from any sentence imposed in that requesting State.

7. If the State party requested to make a transfer to the Court has also received a request for extradition from a State non-party but one to which it is bound by an extradition agreement, it shall rule as in the case of concurrent requests for extradition, taking into account the following circumstances:

- The respective dates of the requests;

- The respective seriousness of the offences in question, with priority given to the request based on the most serious offences;

- The possibility that an agreement may be concluded between the State non-party requesting the extradition and the Court providing either that, following his trial by that State or after he has served his sentence, the person concerned may be transferred to the Court, or that the Court agrees to return him temporarily to the State requesting his extradition after having tried him, in order that that State may try him in turn or have him serve his sentence.

Article 70

Request for transfer addressed to a State which invokes the principle of complementarity

1. A State party which brings a prosecution in respect of the facts referred to in the request for transfer addressed to it by the Court, or which has already tried the person named in that request and which has not challenged submission to the Court under article 39, may request the Court to withdraw its request for transfer, on the basis of the principle of complementarity stated in the preamble to this Statute. The person named in the request for transfer may, under the same conditions, challenge submission to the Court and seek the withdrawal of the request for transfer.

The State shall notify the Court which, taking into consideration the facts and the identity of the persons named in the request for transfer, shall rule in accordance with the provisions of article 35, paragraphs (a) and (c), and article 39, paragraphs 3, 5, 6 and 7. Warrants issued subsequently by the Court shall remain in force, and the State parties shall be bound to cooperate.

2. The persons named in a request for transfer addressed to a State which challenges submission to the Court under paragraph 1 of this article shall in no

circumstances be placed in detention at the request of the Court before it has finally ruled on submission.

At the request of the Prosecutor of the Court, the Preliminary Investigations Chamber may nevertheless issue against such persons a warrant for judicial supervision, in order inter alia to prevent them leaving the territory of the requested State before the Court has finally ruled on submission.

Article 71

Costs

The costs of the transfer of a suspect to the seat of the Court or to the place which it specifies shall be borne by the requested State.

SUBTITLE 2. JUDICIAL ASSISTANCE

Article 72

Basic conditions

1. The obligation to cooperate provided for in article 60 shall take precedence over all the legal obstacles which the State to which the request for judicial assistance is made invokes against the Court pursuant to its internal law or the treaties to which it is a party.

2. The Court's requests for judicial assistance may concern, without being limited thereto:

(a) The seizure and transmission to the Court of all papers, files or documents, including judicial decisions, extracts from criminal records, and documents of governmental bodies;

(b) The service of procedural documents;

(c) The hearing of witnesses;

(d) The questioning of any suspect or accused, including those named in a request for transfer;

(e) The production and transmission of any expert opinion or report necessary to the Court.

3. The requested State may, when it deems it to be in its interest, transmit documents, papers, files or information to the Prosecutor on a confidential basis. The Prosecutor may then use them only for the purpose of collecting new evidence.

The State may automatically or at the request of the Prosecutor subsequently authorize the publication of such documents, papers, files or information. They may then be used as evidence, provided that they are previously communicated to the accused.

4. The provisions of article 123 shall apply to any request for judicial assistance made by the Court under this article.

Article 73

Formalities of judicial assistance

1. The request for judicial assistance, in written form and signed by the Prosecutor, shall be addressed by the Registrar to the competent authority of the requested State designated in accordance with article 62.

2. The request referred to in paragraph 1 of this article shall be accompanied by the following information:

(a) A statement of the facts in respect of which the request for judicial assistance is made, the date and place of their commission and their legal characterization in accordance with articles 27 to 32;

(b) The identity, and if possible, the address of any person named in the request;

(c) The fullest possible details of the requested assistance.

3. The documents produced in response to the request for judicial assistance shall be addressed by States to the Registrar of the Court.

The Court may request the transmission of the original copies of these documents or of any other documents. In such cases the requested State may, with the consent of the Preliminary Investigations Chamber, defer the despatch of these documents for as long as is necessary for the conduct of an investigation or legal proceeding in its territory. If the original copies of the documents are transmitted to the Court, they shall be returned as soon as possible to the State which transmitted them, if that State so requests.

If the Court does not make any request under the preceding paragraph, the requested State may transmit merely certified copies or photocopies of the documents.

4. In an emergency, the request referred to in paragraph 1 of this article may be transmitted to a State by any means producing a written communication.

At the request of the Court, the documents produced in response to the request shall also be sent urgently by any means. The procedure described in paragraphs 2 and 3 of this article shall subsequently be followed.

5. The Prosecutor or members of the Procuracy may assist with the execution of the request for judicial assistance by the authorities of the requested State. The requested State may authorize them to carry out certain inquiries in its territory.

If the competent authorities of the requested State are no longer able, owing to their lack of organization, to respond to requests for judicial assistance submitted by the Prosecutor, he may request from the Preliminary Investigations Chamber authorization to conduct the necessary inquiries directly in the territory

of the requested State. The requested State shall be given prior notification and may submit comments to the Preliminary Investigations Chamber, in particular for the purpose of obtaining an extension of the period for execution of the request for judicial assistance.

Article 74

Witnesses and experts

1. Witnesses or experts may not be compelled to testify at the seat of the Court.

If they do not wish to travel to the seat of the Court, their testimony shall be taken in the country in which they reside or in some other place which they may determine by common accord with the Court.

In order to guarantee the safety of witnesses and experts, any means of communication may be used in order to take their testimony while preserving their anonymity.

2. No witness or expert who appears before the Court may be prosecuted, detained or submitted to any other restriction of personal freedom by the Court.

3. Notwithstanding the provisions of the second and third sentences of paragraph 1 of this article, any detainee whose appearance as a witness or for the purposes of confrontation is requested by the Court shall, if necessary, be transferred temporarily to the seat of the Court or to the place which it specifies.

If this person must pass in transit through the territory of another State party, the Registrar of the Court shall proceed in accordance with article 68.

A person transferred in this manner shall remain in detention for as long as is necessary for his testimony or confrontation, unless the State in whose territory he was detained requests his release. In such circumstances the Court shall grant the request as soon as possible, and the person may not be prosecuted, detained or subjected to any other restriction of his personal freedom by the Court.

If the State which has transferred the person concerned to the seat of the Court or to the place which it specifies does not request his release, he shall be transferred back to that State as soon as possible after his testimony or confrontation.

Article 75

Costs

1. The costs of executing requests for judicial assistance in the territory of States parties shall be borne by them, except with respect to the travel and subsistence costs of the Prosecutor, members of his office or any other member of the Court.

2. The costs of transmitting documents or papers, including urgent transmission, to the seat of the Court or to the place which it specifies shall be borne by the States parties.

3. The costs of transferring to the seat of the Court, or to the place which it specifies, detainees whose appearance is requested by the Court as witnesses or for the purposes of confrontation shall be borne by the States parties.

4. The costs of the travel of witnesses or experts to the seat of the Court or to the place which it specifies and the costs of their subsistence shall be borne by the budget of the Court.

5. The costs of any expert opinion or report requested by the Court shall be borne by the budget of the Court.

Article 76

Reciprocal assistance

1. The States parties may, for the purposes of a current investigation or legal proceeding, request the Court to transmit papers or documents obtained in the course of an investigation or a legal proceeding conducted by the Court.

2. If such papers or documents have been obtained with the assistance of a State, this State must give its prior consent to any communication addressed to the requesting State. It shall be invited, at the request of the Preliminary Investigations Chamber and through the Registrar, to make its decision known.

3. In the case of the testimony of a witness or expert, such witness or expert must also give his prior consent to any communication addressed to the requesting State. He shall be invited to do so at the request of the Preliminary Investigations Chamber and through the Registrar.

4. The Preliminary Investigations Chamber shall grant the request after having obtained the necessary consents.

The Preliminary Investigations Chamber may, under the same conditions, grant such a request from a State non-party. In taking its decision it shall bear in mind the behaviour of that State in connection with earlier requests for cooperation addressed to it by the Court and the interests of justice.

PART FIVE. CRIMINAL LAW AND CRIMINAL RESPONSIBILITY

TITLE I. APPLICABLE LAW

Article 77

Applicable law

The Court shall apply:

(a) In the first place, this Statute and the treaties to which it makes reference;

(b) If necessary, the principles and rules of general international law;

(c) Failing that, and provided that such action does not conflict with the provisions mentioned above, the internal law of the State in whose territory the crime has been committed and, on a subsidiary basis, the internal law of the State of which the accused is a national.

TITLE II. PERSONS LIABLE TO PUNISHMENT

Article 78

Physical persons and juridical persons

1. The Court shall be competent to take cognizance of the criminal responsibility of:

(a) Physical persons;

(b) Juridical persons, with the exception of States, when the crimes committed were committed on behalf of such juridical persons or by their agencies or representatives.

2. The criminal responsibility of juridical persons shall not exclude the criminal responsibility of physical persons who are perpetrators of or accomplices in the same crimes.

3. These provisions shall be without prejudice to the responsibility of States with respect to international law.

Article 79

Official capacity of the accused

The official capacity of the accused, either as head of State or Government, or as a member of a Government or parliament, or as an elected representative, or as an agent of the State shall in no case exempt him from his criminal responsibility under this Statute, nor shall it constitute a ground for reduction of the sentence.

The special procedural rules, the immunities and the protection attached to the official capacity of the accused and established by internal law or by international conventions or treaties may not be used as a defence before the Court.

Article 80

Age of persons liable to punishment

1. Persons aged under 13 years at the time of the facts shall not be criminally responsible.

2. Persons aged 13 to 18 years at the time of the facts shall be criminally responsible but their prosecution, trial and sentence and the regime under which

they serve their sentence may give rise to the application of special modalities specified in this Statute.

TITLE III. MATERIAL AND MORAL ELEMENTS OF OFFENCES

Article 81

Commission and attempted commission

1. The perpetrator of a crime is the person who commits or attempts to commit it.

2. A crime is attempted when its commission has been commenced and has been interrupted or ceased to have effect only owing to circumstances beyond the control of the perpetrator. The commencement of the commission of a crime is characterized by one or more acts which must have the direct consequence of commission of the crime when the crime has entered its period of commission.

Article 82

Omission

A person shall be regarded as the perpetrator of a crime when, acting as a superior and having effective control over his subordinates, he knew or could not have been unaware that his subordinates were preparing to commit a crime and when he did not take, although he had the possibility of doing so, the necessary reasonable measures to prevent the commission of the crime.

Article 83

Moral element

There cannot be a crime without the intention to commit it.

TITLE IV. COMPLICITY

Article 84

Perpetrator and accomplice

1. An accomplice in a crime shall be punished as the perpetrator.

2. An accomplice is a person who knowingly, through aid or assistance, facilitates the preparation or commission of a crime.

3. An accomplice is also a person who knowingly, by whatever means, plans, incites the commission, orders, or assists and encourages the planning, preparation or commission of a crime.

TITLE V. JUSTIFICATION

Objective grounds for exemption from criminal responsibility

Article 85

Prescription by law, and orders of the legitimate authority

1. With regard to genocide, crimes against humanity and the crime of aggression, the perpetrator of or accomplice in one of these crimes may not be exempted from his criminal responsibility by the sole fact that he carried out an act prescribed or authorized by legislation or regulations or an act ordered by the legitimate authority. However, the Court shall take this circumstance into account when determining the sentence and its severity.

2. With regard to the crimes referred to in articles 31 and 32, a person who carries out an act ordered by the legitimate authority shall not be criminally responsible except when such an act is manifestly illegal or in conflict with the rules of international law applicable in armed conflicts or with duly ratified or approved international conventions.

3. However, persons who have carried out acts ordered by the Security Council or who have acted on its behalf and in accordance with a mandate issued by it shall not be criminally responsible and may not be prosecuted before the Court.

Article 86

Legitimate defence

1. A person who, in the face of an unjustified attack on himself or another person, carries out at that same time an act dictated by the necessity of legitimate self-defence or defence of another person shall not be criminally responsible except when the means of defence used is incommensurate with the seriousness of the attack.

2. The argument of legitimate defence cannot be accepted when the unjustified attack which the person cites in accordance with the preceding paragraph constitutes only an attack on property.

Article 87

Necessity

A person who, in the face of a present or imminent danger threatening himself or another person, commits an act necessary for the protection of his own or the other person's physical integrity shall not be criminally responsible except when the means of defence used is incommensurate with the seriousness of the threat.

TITLE VI. DEFENCES AGAINST CRIMINAL RESPONSIBILITY

Subjective grounds for exemption from criminal responsibility

Article 88

Mental disorders

1. A person who, at the time of the facts, was suffering from a mental or neuropsychic disorder which destroyed his judgement or his control over his actions shall not be criminally responsible.

2. When the mental or neuropsychic disorder from which the person was suffering at the time of the facts merely altered his judgement or impeded his control over his actions without destroying such judgement or control, he shall remain criminally responsible. However, the Court shall take such circumstances into account in determining the sentence and the regime under which it shall be served.

Article 89

Drunkenness and narcotic intoxication

A state of drunkenness caused by the consumption of alcohol or a state of intoxication caused by taking a narcotic product may in no case be regarded as grounds for exemption from criminal responsibility.

Article 90

Constraint

A person acting under the influence of a force or constraint which he cannot resist shall not be criminally responsible, provided that such force or constraint seriously threaten, imminently and inescapably, his life or physical integrity or the life or physical integrity of another person.

Article 91

Misinterpretation of the law

Misinterpretation of the law may not be cited as a ground for exemption from criminal responsibility.

TITLE VII. PENALTIES

Article 92

Physical persons

1. In the case of a physical person who is found guilty, the penalty of imprisonment incurred shall be life imprisonment.

2. The Court may, however, impose a sentence of imprisonment for a specified number of years if there are grounds for mitigation of criminal responsibility or

if it recognizes the existence of mitigating circumstances, bearing in mind in particular the special circumstances of the case, the personality of the guilty party and his degree of involvement in the crime in question.

In the case referred to in the preceding paragraph, the sentence of imprisonment imposed may not be more than 30 years.

3. In the case of a person aged 13 to 18 years at the time of the facts who is found guilty, the Court may not impose a sentence of more than 20 years imprisonment. However, by way of exception and taking into account the circumstances of the case and the personality of the person concerned, the Court may decide that there are no grounds for mitigation and impose a sentence under the same conditions as those referred to in paragraphs 1 and 2 of this article. The Court shall give its specific reasons for such a decision.

4. In the case of a physical person who is found guilty, the Court may also impose a fine, the amount of which shall be freely set by it.

5. In the case of physical persons who are found guilty, fines may be imposed in addition to sentences of imprisonment.

Article 93

Applicable penalties in the event of concurrence of offences

1. Concurrence of offences occurs when an offence is committed by a person before he has finally been sentenced by the Court for another offence.

2. When, in the course of the same proceedings, a physical person is convicted by the Court of several concurrent offences within the meaning of paragraph 1 of this article, only one sentence of imprisonment may be imposed on him, under the conditions provided for in article 92. This sentence shall be deemed common to the concurrent offences.

3. When, in the course of separate proceedings, a physical person is convicted by the Court of several concurrent offences within the meaning of paragraph 1 of this article, several sentences of imprisonment may be imposed on him, under the conditions provided for in article 92. Such sentences shall run consecutively.

In such cases the Court may order that all or part of the sentences of imprisonment shall be served concurrently. Concurrency shall be automatic when one of the sentences is life imprisonment.

4. Fines imposed on physical persons may be cumulative with each other and with fines imposed for concurrent crimes within the meaning of paragraph 1 of this article.

Article 94

Minimum periods

1. When the Court imposes a sentence of imprisonment of more than five years, it may attach to the sentence a minimum period during which the guilty party may

not be granted any reduction or amendment of his sentence as provided for in Part 8 of this Statute.

2. The duration of the minimum period shall be freely set by the Court, but it may not exceed either two-thirds of the sentence in the case of imprisonment for a specified number of years or 22 years in the case of life imprisonment.

Article 95

Juridical persons

1. In respect of all the crimes referred to in article 27, juridical persons who are held to be criminally responsible by the Court shall incur the following penalties:

(a) Fines, the amount of which shall be freely set by the Court;

(b) Dissolution;

(c) Prohibition, in perpetuity or for a period freely determined by the Court, of the direct or indirect exercise of one or more professional or social activities;

(d) Closure, in perpetuity or for a period freely determined by the Court, of the establishments used in the commission of the crimes;

(e) Confiscation of any item used in the commission of the crimes or which is a product of the crimes.

2. The penalties provided for in paragraph 1 of this article may be cumulative with each other or with penalties imposed for concurrent crimes within the meaning of article 93, paragraph 1, of this Statute.

TITLE VIII. LIMITATION

Article 96

Crimes not subject to limitation

The crimes sumbitted to in article 27 (a), (b) and (c) shall not be subject to limitation.

Article 97

Crimes subject to limitation

1. Proceedings before the Court in respect of the crimes referred to in article 27 (d) and (e) shall be subject to a period of limitation of 10 full years from the date on which the crime was committed, provided that during this period no prosecution has been brought.

2. If a prosecution has been initiated during this period, either before the Court or in a State competent to bring a prosecution under its internal law, the

proceedings before the Court shall not be subject to limitation until 10 full years have elapsed from the date of the most recent prosecution.

PART 6. THE TRIAL

TITLE I. GENERAL

Article 98

Submission to the Trial Chamber

The Trial Chamber shall have jurisdiction over accused persons brought before it by a decision of the Preliminary Investigations Chamber taken under the provisions of article 48, paragraph 6, and article 49, paragraph 2.

Article 99

Pre-trial detention and judicial supervision

The Trial Chamber, upon being seized of a case, must decide whether the accused is to be placed under judicial supervision or in pre-trial detention, in accordance with the rules and modalities laid down in articles 52 to 56.

Appeals against decisions of the Trial Chamber concerning court supervision or pre-trial detention shall be submitted to the Appeals Chamber.

Article 100

Warrants issued by the Trial Chamber

Warrants issued by the Trial Chamber shall remain effective during the trial unless the Trial Chamber decides to terminate or modify them, of its own motion, on application by the prosecutor or the accused, or upon expiry of the four-month period referred to in article 56, paragraph 1.

Article 101

Rights of the accused

The accused shall enjoy the rights afforded to suspects under article 51, paragraph 1. He shall also be entitled:

- to a fair hearing by an independent and impartial tribunal. Subject to the provisions of article 104, the hearing shall be public;
- to have adequate time and facilities for the preparation of his defence;
- to be tried without undue delay;
- to examine or have examined the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;

- to have communicated to him all evidence submitted to the Court.

Article 102

Measures for ensuring the protection of victims and witnesses

1. The Trial Chamber may, at the request of the prosecutor, the accused, the victim or the witness concerned, order appropriate measures to protect the privacy and security of victims or witnesses, provided the said measures are not prejudicial to the rights of the accused. The States parties are required, where necessary, to execute these measures, subject to observance of their internal law.

2. The Trial Chamber may hold a hearing in camera for the purpose of determining, without prejudice to the rights of the accused, the necessity of ordering:

(a) measures to prevent disclosure to the public or the information media of the identity of a victim or a witness, of a person related to them or associated with them, or of their locality, such as:

- deletion, from the court records, of the name of the person concerned and of particulars by means of which he might be identified,

- prohibition of access by the public to any evidence in the file by means of which the victim might be identified,

- the use, during testimony, of technical methods for altering appearances or voices, or the use of closed-circuit television,

- the use of a pseudonym.

(b) the holding of hearings in camera, in accordance with article 104, paragraph 2 and 3;

(c) appropriate measures to facilitate testimony by a victim or by a vulnerable witness, e.g. by means of closed-circuit television.

Article 103

Place of trial

The trial shall be held at the seat of the Court.

However, if the interest of justice so requires, the trial may be held in any other place by a decision taken in accordance with the provisions of article 4.

Article 104

Public nature of trial

1. The trial, with the exception of the consideration of findings, shall be public.

2. Nevertheless, the Trial Chamber may, of its own motion or at the request of the prosecutor, the accused, a victim or a witness, order, by a decision given in public, that the entire trial or a part thereof be held in camera:

(a) for reasons connected with protection of public order or of human dignity;

(b) to ensure the safety and protection of the accused, of the victims or of witnesses.

3. Proceedings shall be held in camera as of right:

(a) at the request of the accused if he was a minor at the time of commission of the acts;

(b) at the request of a witness or a victim who suffered sexual violence.

When in camera proceedings have been ordered, the judgement on the merits shall always be pronounced in public hearing.

Article 105

Determination of proof

The commission of a crime may be established by any method of proof and the Trial Chamber shall decide in accordance with its innermost conviction.

It may base its decision only on evidence submitted to it during the deliberations and discussed before it on an adversary basis.

The accused must have the benefit of the doubt.

TITLE II. FORMALITIES PRIOR TO THE OPENING OF THE TRIAL

Article 106

Summons for the accused to appear

The Registrar of the Court shall inform the accused of the date of opening of the trial at least two months before that date.

Article 107

Notification of the indictment to the States parties for the purpose of challenging the submission of the case to the Court

1. At least three months before the date of opening of the trial, the Registrar shall notify the States parties of the confirmed indictments and shall inform them that they are allowed a period of one month from the date of such notification in which to advise him if they challenge the submission of the case to the Court.

2. If a State has declared its intention to challenge the submission of the case to the Court, under articles 115 and 116, and within the time-limit laid down

in the preceding paragraph, the prosecutor shall notify to the State the date on which the trial is to be held, such notification to be given at least two months before that date.

Article 108

Summoning of witnesses and experts

1. The prosecutor shall communicate to the accused and the accused shall communicate to the prosecutor, as soon as possible and in any event within 15 days of the opening of the trial, the list of persons they wish to have heard as witnesses or experts in support of the evidence obtained during the investigation.

The communication shall indicate the name, forename, occupation and place of residence of such witnesses or experts.

2. Upon application by the accused, the prosecutor shall, at least one month before the beginning of the trial, summon to appear the witnesses and experts the list of whom has been communicated to him by the accused. This list may not include more than 10 names.

Further witnesses or experts or witnesses or experts whose names were communicated to the prosecutor after the time-limit shall, at the request of the accused and at his expense, be summoned to appear. However, if the accused does not have sufficient resources to bear the cost of their appearance, he may request the Trial Chamber to summon, upon his petition, further witnesses or experts. The Trial Chamber shall determine by a non-appealable decision whether the appearance of the persons concerned will be useful in ascertaining the true facts.

TITLE III. CONDUCT OF THE TRIAL

Article 109

Assistance by a Registrar

During the trial, the Trial Chamber shall have the assistance of a Registrar.

Article 110

Means of constraint

Means of constraint, such as handcuffs, shall not be used except to avoid a risk of escape during transfer or for reasons of security; they shall be removed when the accused appears before the Trial Chamber.

Article 111

Presence of the accused at the trial

1. The trial shall take place in the presence of the accused.

However, the Trial Chamber may, exceptionally and by a specially reasoned decision, order that the trial take place in the absence of the accused:

(a) if the latter disrupts the hearing or refuses to appear. In this case the accused shall, until the end of the trial, be held at the disposal of the Chamber by the police. After each hearing, the Registrar shall read the record of the deliberations to the accused and deliver to him a copy of the submissions by the prosecutor and of the judgements given by the Trial Court.

(b) if the accused, because of the state of his health, requests that he be excused from appearing and the Chamber considers that his presence is not essential to the holding of the trial. In this case the Chamber may appoint one of its members to hear the accused at his place of residence or in the local prison where he is held, after his defence counsel has been duly notified. The judge so appointed, assisted by a Registrar, shall examine the accused. The prosecutor and the counsel of the parties may also put questions to him by requesting authorization to do so from the appointed judge. The Registrar shall prepare a record of the examination of the accused and shall transmit it as soon as possible to the Trial Chamber.

2. If the Chamber orders that the trial take place in the absence of the accused, it shall ensure that the rights of the latter, as recognized by the present Statute, are respected and, in particular, that the accused is legally represented, if necessary by defence counsel appointed by the Chamber.

Article 112

Trial of accused who is evading justice

1. If the accused is at liberty, he must give himself up no later than the day before the trial; he may, however, apply to the President of the Trial Chamber for exemption from this requirement. He shall be informed of the decision of the President by any available means. The accused shall be warned that, in the event of his failure to present himself for the opening of the trial, he will be tried in absentia in accordance with the provisions of paragraph 4 of this article. There shall be no appeal against denial of such exemption by the President.

2. If the accused has been placed under judicial supervision by the Trial Chamber, this supervision shall continue in force until such time as the accused gives himself up or, if he is exempted from the requirement to give himself up, until such time as the Trial Court takes the decision referred to in article 100.

3. If the accused does not give himself up in accordance with the provisions of paragraph 1, or, if he has been exempted from the requirement to give himself up, does not present himself at the opening of the trial, or if he escapes during the course of the trial before the Chamber has withdrawn to deliberate, the Trial Chamber may issue a warrant requiring that he be sought, arrested and transferred.

This warrant must contain a statement of the acts referred to in the decision confirming the indictment for the offence specified in the decision.

This warrant shall be circulated by the Registrar of the Court by any appropriate means; if the accused is found, he shall be served with the warrant and shall be informed of the confirmed indictment if this has not already been done. He shall be brought before the competent national authority, which shall proceed in accordance with article 55, paragraph 3. The accused shall be placed in detention and transferred as soon as possible to the local prison closest to the seat of the Court, or to any other place specified by the Court, in the manner provided for in part 4, title III, of this Statute, with a view to being brought before the Trial Chamber.

4. If the accused has not given himself up on the day before the trial in accordance with the provisions of paragraph 1, or if he was exempted from the requirement to give himself up but did not present himself at the opening of the trial, or if he escapes during the trial before the Chamber retires for deliberation, and he still cannot be found, he may be tried in absentia upon the express application of the prosecutor.

5. The Trial Chamber shall issue a warrant for the arrest and transfer of the accused for the purpose of enforcement of its judgement. This warrant, which shall replace any previous warrant, shall be executed in accordance with the provisions of part 4, title II, of this Statute.

6. If an accused person tried in absentia under the provisions of paragraph 4 gives himself up or is arrested, the decision taken in absentia by the Trial Chamber shall be void in all its provisions and the accused shall be retried, except in the case provided for in paragraph 7.

However, the accused may accept the decision if the sentence pronounced is one of imprisonment for not more than 10 years. Such acceptance must be recorded, in the presence of defence counsel appointed by the accused or appointed by the court at his request, by the President of the Trial Chamber or by any judge appointed by him.

7. The Trial Chamber may allow the accused to be represented by counsel whom he has appointed. In this case, the accused shall be tried in absentia, but the Trial Chamber shall inform the defence counsel of the accused that the latter may not be retried.

Article 113

Opening of trial

At the opening of the trial, the President of the Chamber shall:

(a) Examine the accused in order to verify his identity;

(b) Ensure that the accused has actually been notified of the confirmed indictment and has since then been allowed adequate time and facilities for the preparation of his defence;

(c) Ensure that a defence counsel for the accused is present. If the accused has no counsel, the President of the Chamber shall appoint one of his own motion;

(d) Ensure that the accused understands and speaks the language employed at the hearing. Should this not be the case, the accused shall be entitled to be assisted free of charge by an interpreter appointed by the President of the Trial Chamber;

(e) Have the confirmed indictment read out.

Article 114

Defence of nullity and plea of inadmissibility of evidence

The Trial Chamber shall have competence to rule on defences based on nullity of the proceedings prior to the opening of the trial. It shall also have competence to rule on defences based on the inadmissibility of evidence recorded during the investigation of the accused, particularly with respect to its compatibility with the rights of the defence.

These defences, to be admissible, must be raised by the parties at the opening of the trial, prior to the reading of the confirmed indictment.

The Trial Chamber may rule on these defences by a decision separate from the judgement on the merits and such decision may be appealed to the Appeals Chamber in the manner provided for in article 7 of this Statute.

Article 115

Challenging of submission of the case to the Trial Chamber

Upon the opening of the trial, and in accordance with the procedure laid down in article 116, the right to challenge submission of the case to the Court lies with the accused and with the State which has already exercised its jurisdiction, provided the accused and the State in question have not previously challenged the submission to the Court.

Article 116

Challenge procedure

1. At the opening of the trial, following completion of the formalities provided for in article 113, the accused and the States that have indicated their wish to challenge submission of the case to the Court, in accordance with article 107, paragraph 2, may submit a memorandum raising the question of inadmissibility of a case of which the Court is seized, having regard to the principle of complementarity enunciated in the preamble to this Statute.

Submission of the case to the Court may not subsequently be challenged.

2. If an accused or a State challenges submission of the case to the Court, the Trial Chamber shall adjourn the trial until a final decision has been taken on the matter.

The Trial Chamber shall rule on the defence of inadmissibility. The hearing may take place immediately or at a later date set by the Chamber, either of its own motion or at the request of the prosecutor, the accused or the State challenging the submission to the Court.

3. During the hearing on the question of submission to the Court, the President of the Trial Chamber shall invite the accused or the State challenging submission to the Court to present their arguments, following which he shall request the prosecutor to present his observations.

4. The prosecutor, the accused and the State that has challenged submission to the court may appeal the decision of the Trial Chamber to the Appeals Chamber.

5. At this stage of the proceedings, the Court may decide, having regard to the principle of complementarity enunciated in the preamble to this Statute, that the case brought before it is inadmissible on the ground that the accused has already been acquitted or convicted in final judgement within a State, in respect of the acts specified in the confirmed indictment, unless the proceedings took place in the State concerned in violation of the rules of international law with the aim of protecting the accused from criminal liability.

6. If the Court allows the defence of inadmissibility, it shall declare the case inadmissible and the trial initiated in accordance with this title may not proceed. The case may be declared partly inadmissible, in which case the trial may proceed in respect of the acts and of the accused that do not fall under the provisions of paragraph 5 of the present article.

Article 117

Decision to postpone

The Trial Chamber may, either of its own motion or at the request of the prosecutor or the accused, order postponement of the case to a later date in the interest of proper administration of justice and respect for the rights of the defence.

The parties shall be called upon to submit their observations. The decision shall be taken without prejudice to implementation of the provisions of article 99. It shall not be subject to appeal.

Article 118

Request for judicial assistance

The provisions of part 4, title III, subtitle 2, of this Statute shall apply before the Trial Chamber.

The request for judicial assistance shall be made by the President of the Chamber. The President of the Chamber or a judge appointed by him may assist in

the execution of the request for judicial assistance on the territory of the State to which the request is made.

Article 119

Recording of deliberations and preservation of evidence

1. The Registrar shall prepare and keep a complete record of all the deliberations, including a sound recording, the transcription thereof and, where deemed necessary by the Trial Chamber, an audiovisual record. The latter shall be made from fixed points.

2. The Trial Chamber may, with the consent of a person who had requested that the case be heard in camera, order the disclosure of all or part of the record of the deliberations in camera, if the reasons justifying proceedings in camera no longer exist.

3. The Registrar shall ensure the preservation and custody of all material evidence produced in the course of the proceedings.

4. The Trial Chamber shall determine whether photographs, video recordings or sound recordings may be taken during the hearing other than by the Registrar.

5. All sound or audiovisual recordings made during the deliberations may be used in the event of appeal or revision.

6. Once the trial has concluded with a judgement that has become final, reproduction or full or partial broadcasting of these recordings, in such manner as is laid down in the rules of procedure, may be authorized by the President of the Court.

Article 120

Powers of the President

The President shall control the hearing and direct the deliberations. He shall reject anything which might compromise their dignity or prolong them without giving reason to hope for greater certainty in their results.

He shall have a duty to remain impartial in all circumstances.

He shall determine the order of the examination of the accused, the hearing of experts and the depositions of witnesses.

The accused, the witnesses, the experts and any person called to the bar shall be examined first of all by the President. Following this, the prosecutor and the defence counsel of the accused may also examine them with the authorization of the President.

Article 121

Powers of the Chamber

1. The Trial Chamber may of its own motion call witnesses or experts to appear or have placed before it any new evidence which it deems useful for ascertainment of the truth.

2. The prosecutor or the accused may request the appearance of a witness or of an expert who was not summoned to appear in accordance with article 118. The Chamber may deny such an appearance only if it can show that, for stated reasons, the appearance is not possible or if it will not contribute to ascertainment of the truth. The decision of the Chamber shall not be subject to appeal.

Article 122

Testimony

1. In principle, the Trial Chamber shall hear witnesses in person.

However, in exceptional circumstances and in the interest of justice, the Trial Chamber may, of its own motion or at the request of the prosecutor or the accused, order that a deposition be taken for the purposes of the trial in the manner provided in article 118.

2. The witnesses shall testify separately from each other, in the order determined by the President.

3. Each witness shall, at the request of the President, state his name, forenames, age, occupation and domicile or place of residence. The President may dispense a witness from the requirement to reveal his identity, his occupation or his domicile or place of residence. Before commencing their testimony, the witnesses shall declare on oath that they will speak without hatred and without fear and that they will speak the truth and only the truth.

4. A minor or a person whose judgement has been impaired and who, in the opinion of the Chamber, does not understand the nature of an oath, may be allowed to testify without this formality if the Chamber considers that they are able to describe acts which came to their knowledge and that they understand the meaning of the duty to speak the truth. However, a judgement may not be based on such testimony alone.

5. A witness, other than an expert, who has not yet given evidence, may not be present during the testimony of another witness. However, if he has heard that other testimony this does not mean that his own testimony is inadmissible.

Article 123

Secrecy on defence grounds

1. Any person heard or examined by the Trial Chamber may invoke restrictions provided for in his national law and designed to prevent the divulgation of confidential information connected with national defence.

2. The Trial Chamber may ask the State of which the persons being heard or examined are nationals whether it confirms their claim to be bound to secrecy.

If the State confirms to the Trial Chamber that an obligation of secrecy exists, the Chamber shall note this fact.

3. The provisions of the preceding paragraphs shall also apply to execution of a request for judicial assistance made under article 72.

Article 124

Perjury

If, following the deliberations, the testimony of a witness appears to be false, the Trial Chamber shall request the Registrar to prepare a record of this testimony, which shall be transmitted promptly to the judicial authorities of the State that may undertake prosecution of the witness. The States parties shall extend the provisions of their legislation that are applicable to perjury to testimony given by their nationals under this Statute.

Article 125

Confidentiality of communications between the accused and his defence counsel

1. The accused and his defence counsel may converse to the extent necessary for the organization of the defence, without their conversation being supervised.

2. All communications between an accused and his defence counsel shall be covered by professional secrecy and their disclosure may not be ordered unless:

(a) the accused consents to their disclosure;

(b) the accused has voluntarily disclosed their contents to a third party and this third party refers to them during the trial.

Article 126

Arguments and pleadings

Once the investigation and hearing of the case are concluded, the victims may, through defenders whose number shall be set by the Trial Chamber, request the latter to establish principles relating to civil compensation for the damage caused to them by the crimes of which the Chamber has been seized.

The prosecutor shall make his submissions.

The accused and his defence counsel shall present their defence.

The prosecutor shall have a right of reply, but the accused or his defence counsel shall always have the last word.

Article 127

Consideration of decisions

Following the submission by the prosecutor and the pleadings of the accused, the President shall declare the deliberations concluded and the Chamber shall withdraw to deliberate in camera.

The accused shall be found guilty only if the majority of the Trial Chamber considers that his guilt has been proved beyond reasonable doubt.

The Trial Chamber shall pronounce its finding separately for each charge in the indictment. If several accused are tried together, the Chamber shall rule separately on the case of each one of them.

If the Trial Chamber finds the accused guilty, it shall decide on the sentence by majority vote.

Where necessary, it shall also establish principles relating to compensation for damage caused to the victims and to restitution of property unlawfully acquired by the persons convicted.

The manner in which the decisions of the Trial Chamber are taken shall be covered by the confidentiality of deliberations.

Article 128

Fate of the person tried

1. If the accused is acquitted, if he is sentenced to payment of a fine or if he is sentenced to a term of imprisonment already covered by his period in detention, he shall be released immediately unless he is retained for another case by the organs of the court or by the judicial authorities of a State party.

2. In all other cases, the Trial Chamber may, if the circumstances justify prolongation of a measure of security, by a special reasoned decision, maintain the detention of the accused. In this case, so long as the judgement is not final and during appeal proceedings, if any, the convicted person shall remain in detention until such time as the period of detention equals the sentence handed down, without prejudice to application of the provisions of article 99.

Article 129

Judgement

1. The decision shall be taken by the judges who attended throughout the deliberations.

2. The judgement shall be pronounced at a public hearing on a date notified to the parties and to the counsel. The latter shall be entitled to be present.

3. The grounds for the judgement shall be given in writing as soon as possible.

Article 130

Compensation of victims

1. The Registrar shall transmit to the competent authorities of the States concerned the judgement by which the accused was found guilty of an offence which caused damage to a victim.

2. The victim or his successors and assigns may, in accordance with the applicable national law, institute proceedings in a national jurisdiction or any other competent institution in order to obtain compensation for the prejudice caused to them.

3. The judgement of the Court shall be binding on the national jurisdictions of every State party as regards the criminal liability of the person convicted and the principles relating to compensation for damage caused to victims and the restitution of property unlawfully acquired by the person convicted.

Article 131

Non bis in idem

1. Once convicted or acquitted by a final judgement of the Court, a person may no longer be accused on the basis of the same evidence, even for a different offence, either by the organs of the Court or by the judicial authorities of the States parties.

2. However, if new evidence is made known to the prosecutor following acquittal, he may institute new proceedings.

PART 7. APPEAL AND REVISION

TITLE I. APPEAL

Article 132

Appeal against judgement on the merits

Judgements given on the merits of the case by the Trial Chamber, with the exception of those given in the absence of the accused, as provided for in article 112, paragraph 4, may be attacked by lodgement of an appeal.

However, an appeal against judgements given on the merits in the absence of the accused shall be allowed if the latter accepts the judgement or was represented during the trial before the Trial Chamber by defence counsel appointed by him.

The appeal may be general or may relate exclusively to the magnitude of the penalty.

The appeal shall be brought before the Appeals Chamber.

Article 133

Effect of appeal on the judgement

Execution of the judgement shall be suspended during the period allowed for appeal and for the duration of the appeal proceedings.

Article 134

Appeal against judgements other than those given on the merits

Judgements of the Trial Chamber other than those given on the merits may be appealed against if:

(a) they terminate the proceedings;

(b) they provide for committal in custody or judicial supervision.

Judgements of the Trial Chamber other than those given on the merits and which are not referred to in the present article may not be the subject of appeal.

Appeals lodged against the judgements referred to in the present article shall not have suspensive effect. They shall be brought before the Appeals Chamber.

Article 135

Persons entitled to lodge appeals

The right of appeal shall lie with the accused and the prosecutor.

Article 136

Time-limit for appeals

1. An appeal shall be lodged within 30 days if it relates to the judgement on merits or to a judgement terminating the proceedings.

The time-limit shall be eight days where the Court rules on an application for release or on an application for the lifting of a restriction or a modification of judicial supervision.

2. This period shall run from the date of pronouncement of the judgement.

3. However, it shall run only from the date of notification of the judgement:

(a) for an accused who was not present or represented at the hearing where the judgement was pronounced, but only in those cases where he himself or his defence counsel were not informed of the date on which the judgement would be pronounced;

(b) for an accused who requested that he be tried in absentia in accordance with the provisions of article 111, paragraph 1 (b).

Article 137

Form of appeal

The notice of appeal must be lodged with the Registrar of the Court and communicated to the other parties.

It shall be signed by the Registrar and by the appellant or by his defence counsel.

If the appellant is in detention, the appeal may be effected by means of a declaration to the head of the prison facility. The declaration shall be noted, dated and signed by the head of the prison facility and the appellant. It shall be transmitted promptly to the Registrar of the Court who shall notify the other parties of the appeal.

Article 138

Proceedings before the Appeals Chamber

The rules of procedure laid down for the Trial Chamber shall apply in the Appeals Chamber, subject to articles 107, 115, 116 and 130 and the following provisions.

Article 139

Copies of evidence

Persons who have been convicted shall be entitled to delivery to them by the Registrar of the Court of certified true copies of the judgement of the Trial Chamber and of the complete record of the deliberations.

Article 140

Submission to the Appeals Chamber

The Appeals Chamber shall be seized of the case by the notice of appeal.

Article 141

Plea of nullity

The Court shall admit a plea of nullity based on nullity of the procedure followed in the Trial Chamber with regard to evidence produced in that Chamber, if the nullity is referred to by the President, the prosecutor or the accused in the course of the proceedings in the Appeals Chamber and has already been raised in the Trial Chamber.

Other defences based on nullity of the procedure followed in the Trial Chamber shall not be admissible.

Defences based on nullity of the summons to appear before the Appeals Chamber must, to be admissible, be raised by the parties at the opening of the

proceedings, before the reading of the judgement of the Trial Chamber and of the notice of appeal.

Article 142

Status of the accused following decision on appeal

In the event of conviction, the decision shall be immediately enforceable.

If the accused is not present on the day of pronouncement of the decision, the Appeals Chamber shall give its decision in his absence and shall order that he be arrested and placed at the disposal of the Court, unless the accused is acquitted or sentenced to a term of imprisonment covered by his pre-trial detention.

Article 143

Compensation in the case of acquittal

The Appeals Chamber may grant compensation to a person who was held in pre-trial detention during proceedings against him that have concluded with a final decision of acquittal. The compensation shall be based on the prejudice caused to him by such detention.

TITLE II. REVISION

Article 144

Application for revision

Revision of a final judgement in a criminal case may be applied for if, following the conviction, a new circumstance or evidence of which the Court was unaware at the time of the trial occurs or becomes known and is such as to create doubt as to the guilt of the person convicted.

Article 145

Persons entitled to apply for revision

Revision may be applied for:

(a) By the prosecutor of the Court;

(b) By the person convicted and, after the death of the latter, by his spouse, his children, his relatives or any persons having express instructions to apply for revision.

Article 146

Revision procedure

1. The application for revision shall be made to the Presidency.

The latter shall, either directly or within the framework of an application for judicial assistance, undertake such investigation and verification as may be required. It may, at any time, order suspension of execution of the sentence.

2. The Presidency shall rule on the application following a public hearing at which the oral or written observations of the appellant or his defence counsel and of the prosecutor shall be recorded. The Presidency shall announce the grounds for the decision, which shall not be subject to appeal.

3. The Presidency shall reject the application if it considers the latter unfounded. If it considers that there are valid grounds for the application, it shall annul the conviction and refer the accused to a jurisdiction at the same level as but having a composition different from that of the jurisdiction which handed down the annulled decision.

Article 147

Award of compensation to persons found innocent

The Court may award compensation to a convicted person who is found innocent under the present title, the compensation to be in the amount of the prejudice caused by the conviction, unless it is demonstrated that he was responsible for a failure to produce new evidence or to reveal an unknown factor in good time.

PART 8. ENFORCEMENT

Article 148

Binding force of decisions of the Court

1. The States parties undertake to enforce directly on their territory the decisions handed down by the Court, in accordance with the provisions of this part.

2. A sentence pronounced by the Court shall be binding on the States parties, which may in no case modify it, whether by reducing it, or increasing it, or by altering its nature.

However, if the sentence pronounced by the Court exceeds the maximum sentence for the same offence provided for in the internal law of a State designated by the Presidency under article 149, it may, with the prior and express consent of the Presidency, be reduced by that State to the maximum incurred under its internal law.

Article 149

Place of execution of the sentence

1. A sentence of imprisonment imposed by the court shall be served in a State designated by the Presidency from a list of States which have indicated to the Presidency their willingness to accept sentenced persons. Before taking its decision, the Presidency shall request the person sentenced to comment on the matter.

2. A State may make its consent conditional on the applicability of its internal law relating to pardons, conditional release and commutation of sentences to persons sentenced by the Court. Notwithstanding the provisions of article 152, paragraph 1, only the State of detention shall then have competence to apply these measures.

3. Although not included in the list referred to in paragraph 1 of this article, a State may, on a case-by-case basis, either of its own motion or at the request of the Presidency, give its consent to a person sentenced by the court serving his sentence on its territory. It may make its consent subject to the condition referred to in paragraph 2 of this article.

4. If no State is designated by the Presidency under paragraphs 1 or 3 of this article, the sentence imposed by the Court shall be served in a prison facility made available by the host State.

Article 150

Supervision of the execution of sentences

1. The conditions of detention shall be governed by the law of the State of detention.

2. A sentence shall be enforced under the supervision of the Presidency.

3. Communications between persons sentenced and the Court shall be free and confidential.

Any sentenced person may address a petition to the Presidency in order to complain about his conditions of detention.

4. The Presidency, having requested any necessary information of the State on whose territory the sentenced person is incarcerated, may, if it believes there are grounds for the petition, take such measures as it deems appropriate in order to modify the conditions of detention of the sentenced person.

The State of detention shall be obliged to enforce these measures.

The Presidency may also, of its own motion or at the request of the sentenced person or the State of detention, decide that the sentenced person be transferred to another State party for the continued serving of his sentence.

Article 151

Observance of the rule of speciality

1. Subject to the provisions of article 67, paragraphs 3 and 4, the State on whose territory a convicted person is serving the sentence imposed by the Court may not prosecute or try him, cause him to serve a sentence imposed by its courts or subject him to any other restriction of his personal freedom for any act committed prior to his incarceration on its territory.

2. However, the Presidency may, at the request of the State of detention, authorize prosecution or the execution of a penalty imposed by the courts of that State. The Presidency shall rule on the matter after having requested the comments of the prisoner.

3. The rule established by paragraph 1 of this article shall cease to have effect if the sentenced person remains more than 30 days on the territory of the State of detention after having served the full sentence imposed by the Court.

Article 152

Pardon, parole and commutation of sentences

1. Subject to the provisions of article 149, paragraph 2, if a person sentenced by the Court may benefit from a pardon, parole or commutation of his sentence under the internal law of the State of detention, the latter shall notify the Registrar of the Court and the prisoner of this fact.

The prisoner may also petition the Presidency for a pardon, parole or commutation of his sentence.

The Presidency shall decide whether the prisoner shall be granted a pardon, parole or commutation of his sentence and shall specify the modalities thereof.

The State of detention shall promptly implement the decision of the Presidency, which shall be notified to it and to the prisoner by the Registrar.

2. If the provisions of article 149, paragraph 2, apply, the State of detention shall notify the Registrar of the Court, who shall inform the Presidency, at least 45 days in advance, of any decision that may appreciably alter the duration of the detention.

Article 153

Enforcement of fines

1. For the purpose of enforcement of fines imposed by the Court, the Presidency may order the forced sale of any property of the person sentenced which is on the territory of a State party.

For the same purpose, the Presidency may order the confiscation of any sum of money or securities belonging to the person sentenced.

The decisions of the Presidency shall be implemented by the States parties in accordance with their national law.

2. The sums thus obtained shall be allocated by the Presidency of the Court.

3. The provisions of this article shall be applicable to juridical persons.

Article 154

Escape

1. If the person sentenced escapes, the Presidency shall request of any State party the transfer of the escapee.

The provisions of article 66 shall be applicable to such a request for transfer for the purposes of ensuring that the remainder of the sentence is served, with the exception of the documents to be sent with the request, which shall be limited to an original of the decision handed down by the Court, or a copy of the decision, certified by the Registrar to be a true copy, and as detailed a description as possible of the person sentenced.

2. Once the sentenced person has been arrested, he shall be transferred as soon as possible to the territory of the State in which he was serving his sentence or to such other place as may be decided by the Presidency.

The period of detention in the territory of the State where the sentenced person was arrested after his escape shall be deducted in full from the sentence remaining to be served.

3. If the State party on the territory of which the escaped person is arrested gives its consent, the sentenced person may serve the remainder of his sentence in that State if this is agreed to by the Presidency.

In this case, application of the provisions of article 149, paragraph 2, shall also be subject to the agreement of the Presidency.